



JUDICIARY

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 2127 OF 2007

BETWEEN:

DWANGWA CANE GROWERS TRUST.....PLAINTIFF

- AND -

HENRY STEVEN CHISANGWALADEFENDANT

CORAM: THE HONOURABLE JUSTICE E. B. TWEA

M/S Mhone and Kalua, of the Counsel for the plaintiff

Mr Kadzakumanja, of the Counsel for the defendant

Mary Mthunzi – Recording Officer

ORDER

Twea, J

After due deliberations it is clear that the problem manifests itself as legal only because the rights of the parties were not properly explained at the meetings.

The legal position is that when one is allotted customary land one has the

right to user for the surface only, in respect of what one can grow or build on the land. One does not have right of user to the sub – soil and whatever lies under. According to section 26 of the Land Act the Minister responsible for land has control of a customary land, its use and minerals on or under it. For the same reason one does not acquire right of user to the airspace.

The position therefore, is that, if the canals are dug for the purpose of laying irrigation pipes 2 metres in the ground, the Government and the developer have a right to dig the land. The Government and the developer however, should refill the trenches and render the land useable by the citizens who do not wish to join the scheme. Should there be open canals or crops or trees destroyed then the citizens are entitled to compensation for the land and crops. However, it is important to remind the citizens that they will not have the right to draw water from the open canals which will be property of the Government and the developer. They may however, take advantage of the moisture that the open canals would bring.

I therefore order as follows:

- 1) that the objectors shall allow the Government and developers to dig canals and lay pipes for irrigation.
- 2) that the Government and developers should refill the canals after laying pipes to render the land useable.
- 3) that should there be crops or trees destroyed the citizens to be compensated, if they were not already so compensated,

that the counsel for defendants should list down all objectors who are, so far, not on record,
that both Counsel for the plaintiffs and defendants should explain the rights

of the Government and Developers and of the objecting Citizens at a joint meeting,

that the Government and Developers should set out, on the maps and sketches, the locations of the lands of the objecting citizens which shall remain customary land.

that all citizens maintain the spirit of the development project by respecting the rights of the citizens who are consenting or objecting to cede their lands to the scheme.

Cost be in the cause.

Pronounced in Chambers this 3rd day of December 2007 at Blantyre.

E. B. Twea
JUDGE