

IN THE SUPREME COURT OF APPEAL SITTING AT BLANTYRE

MSCA CIVIL APPEAL NO. 5 OF 2024

[Being High Court of Malawi[Civil Division] Lilongwe Registry, Land Cause Number
77 of 2021]

BETWEEN

IMPALA FARMING COMPANY LTD	1 ST APPLICANT
PYXUS AGRICULTURE LTD	2 ND APPLICANT
AND	
TRADITIONAL AUTHORITY CHIDZUMA	1 ST RESPONDENT
HAROLD SPORTS	2 ND RESPONDENT
PATRICK CHISALE	3 RD RESPONDENT
JAMES CONJEX	4 TH RESPONDENT
WILLIAM ANAFI	5 TH RESPONDENT
CONNEX MITTAWA	6 TH RESPONDENT
GROUP MIJONI	7 TH RESPONDENT
MR. KAMENYA	8 TH RESPONDENT
MR. SMART	9 TH RESPONDENT
MR. DAISON	10 TH RESPONDENT

CORAM: HON. JUSTICE L P CHIKOPA SC JA

Ottobor I[Mrs.], of Counsel for the Applicant

Maulidi, P[Mr.] of Counsel for the Respondent

Minikwa [Mr.], Clerk

RULING/ORDER

The first applicant claims to be a leasehold owner of vast agriculture land in Kasungu district known as New Khola Farm. The second applicant is an assignee of the said farm under Deed Number 92890. The respondents are allegedly trespassers into part of the land comprising the above farm.

Under Civil Cause Number 681 of 2012 at Lilongwe Registry of the High Court of Malawi the first applicant sued the Respondents for summary possession of land occupied by the respondents on New Khola Farm. In the course of such suit, they also sought and were on September 17, 2012 granted an injunction restraining the respondents from *inter alia* dealing, developing and cultivating the land in issue until the matter was determined on the merits.

At the hearing of the matter on the merits the court below found for the respondents. Specifically, it found firstly that the action had been wrongly commenced. And secondly that the applicant's claim was not one that could be disposed of summarily. There were too many factual disputes. The injunction of September 17, 2012 was therefore vacated.

But upon the first applicant indicating that it would appeal against the adverse finding the court below granted a fresh injunction. Dated September 16, 2013. This injunction was to subsist until the appeal launched by the applicant against its judgment had been disposed of.

The said appeal [Civil Appeal Number 41 of 2015] was dismissed by a judgement of this court dated April 21, 2021. This court was equally of the view that the matter was not only wrongly commenced but also incapable of summary disposal. The parties, i.e. the first applicant and the respondents, were thus ordered to go back to the court below before a different judge and thereat have this dispute decided with finality. They were given 90 days, calculated from the said April 21, 2021, to attend to the above.

On July 1, 2021 the applicants herein commenced Civil Case Number 681 of 2012 at the Lilongwe Registry of the High Court against the respondents.

On September 17, 2021 the applicants obtained another injunction restraining the respondents from developing cultivating etc. the land in issue. In a ruling delivered on August 7, 2023 but dated September 6, 2023 the court vacated the new injunction. We will not say much about the sentiments expressed by the court below in doing so. They are and will be the subject of an appeal in this court. Suffice it to say for now that the court *inter alia* said:

'I however direct that the usage shall be on the condition that the defendants do not construct additional structures on the disputed land. The defendants are also directed not to dispose or otherwise distribute the land to new settlers'. [Sic]

The applicants immediately brought another application for a stay. They wanted the above vacation stayed pending an appeal against it in this court. By an order dated August 11, 2023 the court granted the stay. It was in the following words:

'IT IS HEREBY ORDERED and DIRECTED that the ruling delivered on 7th August, 2023 discharging order of interlocutory injunction dated 17th September, 2021 BE and is HEREBY stayed pending the determination of the appeal' [Sic]

The respondents then brought their own application to discharge the stay. It was granted by a ruling dated January 12, 2024.

The applicants have now escalated the matter to this Court. They are not only appealing against the vacation of the injunction but also praying for a reinstatement of the injunction in the alternative an order staying the enforcement of the vacation granted on August 7, 2023 and confirmed on January 12, 2024. On January 17, 2024 we granted the stay order and asked the parties to appear before us on February 14, 2024. They did and this is the ruling in respect thereof.

The respondents oppose the application. They also filed an application seeking the discharge of our order of stay abovementioned.

In arguing their case before us the applicants contend that they have title to New Khola Farm. They are thus entitled to a peaceful enjoyment of the land comprising

New Khola Farm. The land which the respondents are occupying and cultivating is part of New Khola Farm. The respondents in the applicants' view should not be on that land. They are clearly trespassers. They should be evicted. Such eviction should not await the conclusion of the substantive matter between the parties. Such is the clarity and strength of their case the applicants believe that the balance of justice weighs in favour of the respondents being evicted now. It is for that reason that they believe the injunction vacated on January 12, 2024 should be reinstated.

The respondents argue that the application for an injunction is without merit. And laden with procedural impropriety. It is in their view yet another ploy by the applicants to keep them from their land. To disturb their way of life. To prevent them from working the land and exercising their economic rights. They contend that the title on which the applicants' claim is based is flawed. It cannot sustain their alleged leasehold titles over the totality of New Khola Farm or be the basis on which they can evict the respondents from New Khola Farm or any part thereof including that which they currently occupy. The balance of justice in their view therefore weighs in favour of the current application being dismissed with costs.

We should not belabour this matter. Accordingly, we will straightaway say that this dispute is all about the parties understand of the ruling/order of August 7, 2023. The respondents understand it to mean that they can now settle and make use of not just the land they were originally accused of trespassing on in the 2012 action but all that land known as New Khola Farm. That explains why their counsel wrote the applicants asking them to, *inter alia*, vacate New Khola Farm in order to allow the respondents occupy and utilize the same as they deemed fit.

The applicants understand the same ruling/order differently. In their view the dispute herein is not about the totality of New Khola Farm. It is instead about that piece of land, being part of New Khola Farm, on which the respondents were settled at the commencement of Civil Case Number 681 of 2012. The interlocutory injunction granted therein was therefore to, for the time being, get the respondents off that piece of land while the case carried on to finality. When this court thus vacated the injunction, it could not have thereby granted the respondents the freedom to occupy and use the totality of New Khola Farm. It was

only to allow them stay where they were and no more. The applicants want the respondents to be on that piece of land until this matter is fully disposed of and not on the whole of New Khola Farm. When they i.e. the applicants, sought an injunction and when they ask for a stay in this court it is to ensure that the respondents continue to occupy the part of New Khola Farm that they have always occupied and no more.

We have looked at the order in issue. A substantial part thereof is actually reproduced hereinabove. We have also considered the context in which it was made. It is clear in our view that the respondents have at all material times occupied only part of the larger piece of land known as New Khola Farm. The mandatory injunction sought and granted to the first applicant in Civil Cause Number 681 of 2012 was for the removal of the respondents from that piece of land. When therefore this court vacated the injunction of September 16, 2013 on appeal the effect thereof cannot be that the respondents are now at liberty to occupy and utilize the totality of New Khola Farm. Only that piece of land on which they were settled at the commencement of Civil Cause Number 681 of 2012.

When proceedings recommenced in the court below it is clear that while the case might be about the totality of the estate the injunction itself was only about the land on which the respondents had always been settled and no more. The order of August 7, 2023 was equally clear. It said that the respondents have the liberty to continue occupying that land. To continue using it. But only on condition[s] that they do not build any more structures on it. That they do not dispose of it. Or allocate it or parts thereof to new settlers. It says nothing about the rest of the estate. It does not in other words say the respondents are at liberty to occupy use etc.

Read and understood thus it is obvious that the applicants having nothing to worry about the content and purport of the injunction of September 17, 2021? It decrees the very thing that they are beseeching this court to do namely to restrict the respondents to that part of New Khola Farm that they have always occupied as long as they do not put up more structures on it, dispose of it or allocate it to others. The application before us is in that regard unnecessary. It asks for that which the applicants already have. The application is dismissed with costs. The

respondents are, subject to the conditions listed above, at liberty to occupy and cultivate the part of New Khola Farm in issue until further order of a court of competent jurisdiction.

Having decided as above it is also obvious that this matter is proceeding too slowly. It could also benefit from better case management. The parties should not, for instance be allowed to bring in myriad needless interlocutory applications. The matter should instead, and as quickly as possible, proceed to disposition on the merits. Otherwise, there will be no peace in that part of Kasungu.

With that in mind but without, in any way, intending to interfere with the manner in which the court below or the parties herein wishes to deal with or manage this matter we feel obliged to state that we have serious doubts whether there can be an appeal on the merits against the vacation of the injunction. People are therefore better spending their energies on prosecuting the substantive matter in the court below.

Secondly, and in order to speed up this matter, we order that the parties herein appear before the court below within 21 days from the date hereof and thereat agree on a timetable as to how this matter will be disposed of to finality.

We so order.

Dated at Blantyre this 4th day of June, 2024.

JUSTICE L P CHIKOPA SC
DEPUTY CHIEF JUSTICE