



**REPUBLIC OF MALAWI**  
**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**CIVIL DIVISION**  
**(Being Land Cause No. 100 of 2024)**  
**(and Judicial Review No. 26 of 2024)**

**BETWEEN**

**HENRY M'BWANA and MUHAMMAD CHINGOMANJE**

(On their own behalf and on behalf of the other users and  
Occupiers of Kalindima Village dambo customary land, situated at  
Traditional Authority Bibi Kuluunda, in the District of Salima) -----**CLAIMANT**

**AND**

**THE DISTRICT COMMISSIONER OF SALIMA-----1st DEFENDANT**

**PERSONS UNKNOWN -----2nd DEFENDANT**

**CORAM: HIS HONOUR E. BLACKBOARD DAZILIKWIZA PACHALO DANIELS**

Mr. Samir Chilupha, Counsel for the Claimant,

Mr. F. Mathanda, Court Official,

**NOTICE OF REJECTION**

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**DANIELS AR.**

...Thus, we have always maintained the view that, whenever a proceeding is commenced by the hand of Counsel, without first having a searching of his soul, as to whether the said proceeding should be brought to Court, solely on his usual confidence and or experience in his daily trade, and in the end, he omits to appreciate whether he should in the first place, bring that proceeding or not, (then

he must either be overly confident of his art and therefore naïve or that, he may simply be careless to know that his may be a hopeless proceeding) or that he casually omits to be careful enough, so as to be meticulous before he brings his case and thus, thinking to himself either that, the Court will share in his omission and therefore issue an originating process, which otherwise it would not have issued for want of merit (thereby perpetuating the vice of an abuse of the processes of the Court)...<sup>1</sup>

1. We will not partake in Counsel's omission. This we say with greatest respect. Was it not foretold then, and now it is clear that our job is like that of a fortune-teller, the only difference we have is that, one speaks from the pedestal of their spiritual authority but to us, we speak from the authority of the law, articulating what "is" the law and foreseeing through our judicial epistles what "ought to be" the law. When we speak with that authority, we risk a situation where those that do not pay attention but have a privilege of our audience, may eventually be at a place we exactly must have foreseen and warned Counsel not to be ensnared by. What we forewarned in the extract above, is exactly what has happened now, Counsel has filled multiple claims on the same subject matter and the same transaction in our court by way of summons and at the same time by way of judicial review. The processes are both signed by Counsel on the same date and were also filed in our court on a similar day. We will proceed to respectfully reject his originating processes for being an abuse of court process. At the onset, we must mention that we should proceed to consolidate these cases on our own motion under the authority of Order 6 rule 9 of the Courts (High Court) (Civil Procedure) Rules, 2017. The processes which we will decline to issue were filed by KK attorneys.

Suffice to say that, we have read the statement of case attached to the summons and the judicial review Form 86A. The claim is the same and so is the effect of the reliefs sought. In sum, the claimants are arguing that the defendants have acted unreasonably by deciding to arbitrarily acquire their 10 hectares of land situated at Kalindima Village in Salima. They argue that the actions are contrary to sections 28, 30 and 43 of the Republic of Malawi (Constitution) Act as well as sections 3, 4, 9 and 10 of the Land Acquisition and Compensation Act. They allege that the preceding provisions have been violated by the defendants. They in both processes are alleging that the unlawful acquisition of land herein by the defendants is to benefit a third party who has an interest to invest in sugar and other agricultural production on their alleged land. Reading the processes, it becomes apparent that they seek the same remedies from the same subject matter and cause of action. For a fact, this is a classic case where we must reject the processes. Respectfully, Counsel is unsure of what he seeks from the court. When they earlier filed the summons, we had sent them back to comply with section 44 of the Customary Land Act or to explain why they did not so comply. They only brought the summons later on 17 October 2024. Strangely, they have added a judicial review process as well as an application for an interlocutory order. *In casu*, our mind is already made and the fate of these cases is obvious, we will reject the invitation to issue them.

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<sup>1</sup> See paragraph 4 of the case of Democratic Progressive Party v Malawi Electoral Commission Civil Case Number 127 of 2024 (Unreported)

2. Perhaps, we must mention that the authority with which we proceed to hereby reject the documents is well informed from the script of reverend Mambulasa J who reinstated the law as follows:

The Court has inherent jurisdiction to prevent its process from being abused. **Maintaining two applications or claims either in the same** or in two different courts in respect of **the same subject matter** is a classic case of abuse of court process.<sup>2</sup>

(Emphasis added)

We warn ourselves not be guilty of repetition and wound the soul of brevity in the process, but perhaps we must make it clear that, our role as seen by Order 5 rules 10 and 11 of the Courts (High Court) (Civil Procedure) Rules, 2017 is re-echoed by these words of wisdom from the eloquent Mambulasa J, which wisdom has received a fresh puff of life by yet the fresh diction of Kalua J in the case of *Emmanuel Silungwe T/A North Civil Works -v-Zhejieng Communications Construction Group Company Limited*.<sup>3</sup>

3. It is clear from the above, that contrary to this clear position of law, Counsel on the 12<sup>th</sup> September, 2024 proceeded to file summons claiming that the claimants have been deprived of their land through trespass against unknown defendants at the same time he has filed a judicial review process against the decision of Salima District Commissioner's Office to acquire the land allegedly belonging to the claimants for the purposes of having their land to be used for sugar production. These two originating processes were filed on the same date and signed by Counsel on the same date. What is more surprising is that in the judicial review Form or process, Counsel is alleging that there is no alternative remedy, and yet in the summons, Counsel is claiming damages in millions. We are wondering. Our wondering aside, we submit that what Counsel has done cannot be sustained, and we will not issue his processes because Counsel is flooding the Court with a mountain of claims at the same time and on the same subject matter seeking almost the same remedies. That cannot be. Needless to say, we think we should exercise our authority under Order 5 rules 10 and 11 of the Courts (High Court) (Civil Procedure) Rules, 2017 to reject these processes. It is unusual for us to make promises, but on this, we promise that we will reject the processes herein.

For the avoidance of doubt, Order 5 rule 10 of the Courts (High Court) (Civil Procedure) Rules, 2017 provides as follows:

Rules 11, 12 and 13 shall apply if a document that is filed in the Court **appears to the Court on its face to be an abuse of the process of the Court**, or to be frivolous or vexatious.

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<sup>2</sup> See paragraph 12 of the case of Lucious Likongwe -v- Nutricom Food and Beverages Limited Personal Injury Cause No. 569 Of 2021(Unreported)

<sup>3</sup>See paragraph 12 of the case of Emmanuel Silungwe T/A North Civil Works -v- Zhejieng Communications Construction Group Company Limited Commercial Cause Number 343 Of 2020 (Unreported)

(Emphasis added)

4. Indeed, what we have is a classic example of Counsel abusing our processes by filing multiple claims on the same subject matter. What is the consequence of Counsel's omission to do what he ought to do in law? Our response is simple, and we will repeat it: we will decline his invitation for us to allow him abuse our processes. It is clear that our authority to reject his processes is coming from Order 5 rule 11 of the Courts (High Court) (Civil Procedure) Rules, 2017 which is couched as follows:

The Registrar **may reject a document** or refer the document to a Judge for directions about how to deal with it.

(Emphasis added)

The fate of the processes that he filed simultaneously in our court, being a clear classic example of abuse of our processes, the processes of which we are enjoined to guard, is rejection. It is unfortunate but, we see no reason why we should not reject the issuance of the processes herein. Be that as it may, the judicial position that we are unveiling now has not only been settled in Malawi but in Zambia as well. Although, unbinding on us, but we had some mind intercourse with the reasoning of the High Court of Zambia in the case of *Twenty-Four Seven Capital Limited vs Chungu*<sup>4</sup> where the court in hinting that the Registrar of the High Court should reject court processes that are irregular and not supported in law held as follows:

...the delinquency of impropriety was apparently acquiesced to by the registry that for some **incomprehensible reason also issued such irregular filing.**<sup>5</sup>

(Emphasis added)

In that case, there were at the same time commenced an application by way of writ of summons supported by an affidavit as well as originating summons. The applications were for recovery and possession of land, but they did not comply with the rules and directions of the court. The applications were made one with notice and yet the other without notice or *ex parte* on the same subject matter. The court refused to attend to the processes.

5. But, unlike the registry in the above case, in the instant case we have been able to apply our mind and like earlier said, will not issue what we think is an irregular filing. Needless to say, there may be those who think that we do not have jurisdiction to proceed as we hereby do. Our humble response is; unfortunately, we do have the authority. Thus, we must respectfully remind those who suspect our authority to reject court processes, that they should appreciate the revelations found on a proper construction of Order 5 rule 10 and 11 of the Courts (High Court) (Civil Procedure) Rules, 2017 as read together with section 3 and 6A (2) of the Courts Act. Specifically, what this Order entails is that, so long as we

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<sup>4</sup> See paragraph 1.5 of the case of Twenty-Four Seven Capital Limited vs Chungu (HP 322 of 2020) 2020 ZMHC 15 (18 May 2020)

<sup>5</sup> Ibid

can in law show that a document or proceeding is frivolous or vexatious or one that amounts to an abuse of court process or indeed that there is a substantial non-compliance with the rules, then we will be acting within our authority to reject documents. Additionally, what constitutes an abuse of court process or substantial non-compliance with the rules is in our measured view a matter of fact, which must be determined on a case-by-case basis. There is not a time that we have or will exercise this power simply on the excitement of our pen without first applying our faculties to the issues before us. Certainly not.

6. In fact, have we not been sent by the Honourable Justice NyaKaunda Kamanga (as she was then) in the case of *Republic v Kavalo*<sup>6</sup> to do exactly what we have been doing? Of course we have. How would we go unent? Here is how the learned, now Supreme Court of Appeal Justice, sent us to our calling:

**The Registrar should be alert to steps that flout procedural requirements and not process and forward to judges for consideration documents that have not complied with the law and other necessary procedural requirements.<sup>7</sup>**

(Emphasis added)

7. Clearly, we are alert, to our duty of subjecting to a test for compliance with the law in general and the applicable procedural rules, any document that is filed in our court. Why are we belabouring ourselves in exposing these judicial truths? Simple; it is for those who doubt the authority with which we command the scribe of our legal thoughts. What the Honourable, now Justice of the Supreme Court of Appeal said in the case above, was alien to our mind when we first made similar averments in this manner:

Ours is to make sure that the Honourable Judges have court processes befitting the office and the honour of the Judges. Not every record should be clothed with legs so as to reach the revered chambers of the Honourable Judges.<sup>8</sup>

When we uttered these words, we were motivated by the same spirit that motivated the court in *Republic v Kavalo*.<sup>9</sup> We were not anointing ourselves with the powers of the office of the judge as those who wish to think so would do. With respect, we understand that this is not our time, but it is coming, how long it will take remains a matter that does not concern us when we are simply doing what we have read the law to be. To add, what informs our command are the unsurprising words of Honourable Justice NyaKaunda Kamanga (as she was then) who in the case cited, further showed us how we should work as follows:

**The offender having failed to comply with the statutory time limit for filing appeals, the registrar should not have accepted the filing and issuing of such**

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<sup>6</sup> See paragraph 2-line number 7 of the case of Republic v Kavalo 18 MLR 274

<sup>7</sup> Ibid

<sup>8</sup> See paragraph 10 of the case of in the matter of the Admissions of Alfred Hlewani Ndhlovu, Chikondi Changwanjira, Temwa Peace Mfinda and Others and in the matter of (Admission Causes No. 28, 29,30...) and in the matter of the Legal Education and Legal Practitioners Act (Unreported).

<sup>9</sup> Republic v Kavalo 18 MLR 274

**irregular documents** in the High Court Registry, and in any event this court should have declared this appeal incompetent on this basis...<sup>10</sup>

We are simply obeying the directions and the law when we take it upon ourselves to deny processes. Furthermore, we will not be afraid to think on the basis that our reasonings may be reversed by those superior in authority. That is exactly why we have the systems in place. We will simply do our job influenced only with the prescriptions of law and relevant facts. With that in mind, we again must remind ourselves lest we forget that we will respectfully reject the issuance of these irregular processes. Counsel is uncertain of what he is seeking in court. He cannot be allowed to bring two originating processes over the same subject matter making similar claims in essence. How can Counsel file summons on the same issue as well as a judicial review process? How? We will not volunteer to supply the answers because we were not advised through his filings why Counsel proceeded as he did. We decline to speculate. Many things we would have said, but we shall in the fullness of the times. Now the time is unripe.

All in all, and by the authority of Order 5 Rule 11 of the Courts (High Court) (Civil Procedure) Rules, 2017 we hereby reject the issuance of these processes for being an abuse of our processes.

8. Be that as it is, we would be intellectually dishonest if we were to pretend to have the moral capacity and or inclinations to dismiss allegations of corruption or forum shopping against ourselves, if we were to keep on assigning and taking up cases hiding under the guise of the “unlimited jurisdiction” of the High Court and proceed to issue and or attend to cases which the appropriate forum is elsewhere and not where we entertain any such proceedings. Our view, speaking of ourselves and indeed without any mental reservation is that, it defies logic and rudimentary sense for us to arbitrary process and assign to our Honourable Judges or to ourselves cases which otherwise would be tried or commenced in other registries or divisions or places. If we were to so proceed, we would nurture the ridicule and shame that any judicial office ought not to be subjected to by the public.

Because of the honour that any judicial office of any cadre ought to hold and command, we will not be privy to bringing such an office into disrepute by like in this case accepting the invitation of Counsel without any reasonable cause whatsoever, as to why a matter whose cause of action arose in Salima should be assigned to our Honourable judges in Blantyre when the proper and able forum should be in Lilongwe. We, for one, will not issue to our Honourable Judges that which should not be issued. Not on our watch. The honour of the office of the judge must and will be preserved by our vigilance. It is our duty to do so.

Thus, our motivation is not only with regard to the issues of cost implications, but, we think it is wrong and lacking in judicial prudence for us to think that, since the High Court can hear and determine any matter be it civil or criminal, then the High Court should be thought of having absolute power to be assigned cases that ordinarily by law, practice and or procedure ought to be taken by some other functional quasi or judicial forum. We think

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<sup>10</sup> Ibid

like in this case, when Counsel without cause invites us to that temptation, we should thwart his intentions as a matter of absolute and unequivocal duty. We decline the temptation, with the greatest of respect.

9. The above notwithstanding, we think the registries and divisions are created by law on purpose and as a Registrar, we firmly submit without batting an eyelid that our duty as a gatekeeper, is to make sure that, cases are filed where they should be filed unless otherwise a compelling reason is furnished to us that should move us to issue a case in a registry that otherwise ought not to have been the registry to take up the case in the first place. Ironically, we have not seen anywhere in his processes that he has filed with the court, where Counsel is furnishing us with the reasons as to why we must issue these proceedings to our Honourable Judges here at the Principal Registry-Civil Division when the cause of action happened in Salima (and that if anything, the object of property in issue is in Salima, and that should a *locus in quo* be required, which likely is to be the case with land matters, then the court will have to visit Salima), and that would-be witnesses from either party are likely to be where the dispute arose; Salima. We are surprised why he is filing these processes here.
10. In fact, it would be against the cost cutting premise embedded in our rules of procedure, if we were to issue these proceedings here in Blantyre, when they should be commenced at Lilongwe District Registry-Civil Division. We will not be privy to the invitation of Counsel whose silence on why he has brought these proceedings here in Blantyre at Principal Registry and not in Lilongwe is as loud as we have not heard him. On this alone, we respectfully would be declining the issuing of these processes. Otherwise, Counsel should be at liberty to properly file these proceedings in Lilongwe which is the nearest Registry of the High Court to decide on any issues he may have. A respectful reminder is that, that court is still ably adjudicating matters and Counsel should not in any way be in doubt. Should he knock on its doors, we are certain, he will be supplied with the aid he needs. If this was the only observation we had this far made, we would be transferring these proceedings on our own motion to the High Court, Lilongwe District Registry-Civil Division, borrowing the reasoning of section 6A(2) of the Courts Act, which provides as follows:

Where a person **commences a matter or makes an application in a division other than the appropriate division** in accordance with this section, **the Registrar shall, on his own volition or on application, immediately transfer** the matter to the appropriate division.

(Emphasis added)

Should we not add meat to this provision? We think we should. We think the provision where it talks about an appropriate division should also be construed to mean an appropriate registry. Because, divisions are also found generally in our registries. So, a matter must be filed in an appropriate division and also at an appropriate registry. That is simply a question of no difficulty but simple logic. Again, since under section 3 of the Courts Act, it is the Registrar who issues the processes of the High Court, it is not surprising to see the use of the word “*shall*” in this provision which places a mandatory duty on us

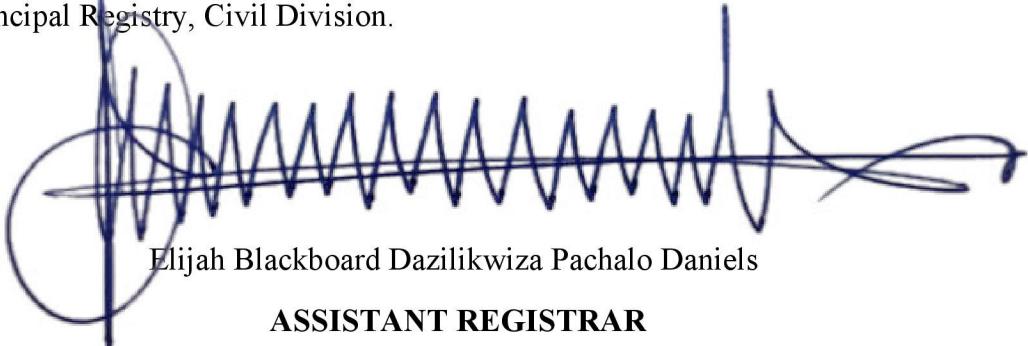
to transfer matters that are wrongly filed in a wrong division and or registry to the appropriate division or registry. Like said earlier, unless there is a real compelling reason to have us issue a case in a registry that otherwise ought not to be the registry of first resort, we will maintain the logical position that cases should be issued where the cause of action arose or the nearest place possible. That is simply elementary.

Moreover, our view is that this should also be implied for a magistrate because under the Subordinate Court Rules, the processes of that court are issued by the magistrate. Their duty is not just to sign the processes filed in their courts, but to also apply their mind as to whether they should issue the processes before them or not. Thus, we should be slow to entertain cases whose cause of action happened elsewhere. Clearly, the issues of distortion of evidence, issues of first hand witnesses, issues of *locus in quo* where so required, issues of unnecessarily over burdening the parties with avoidable expenses and the issue of perception of corruption and forum shopping, (real as they both are) should all inform our actions when issuing cases or indeed taking up cases where we should not. On the issue of forum shopping and the perceptions thereof, our comment may be a judicial kamikaze, but we have a mind of our own and we express it without fear of contradiction or rebuke, because we are entitled to our view. Our view is this, every judicial officer of any cadre must remember that we are fiduciaries and we do not work for ourselves. Thus, we must work by maintaining the sustained trust of the people and we must not erode the confidence of the people in our institution by assuming jurisdiction where law, practice and prudence would require us not to assume jurisdiction. Like said earlier we refuse the invitation of Counsel who is exactly doing that. We decline such a beckoning.

This we must do not because of our personal inclinations but because of the honour that a judicial office holds. It is the integrity of the judicial office that we must protect and respect by refusing to issue and or handle cases that ought ordinarily to be filed elsewhere. This is why we have refused the enticement of Counsel in this case. Again, prudence would require magistrates and us likewise to exercise restraint and return processes as we hereby do, to appropriate places where the cause of action arose or any nearer place. In this case, should we transfer what is now wrongly and with no justification whatsoever before us to Lilongwe?

11. Our answer is simple: We will not do that. Because there is nothing before us to transfer. This is so because before us there are no documents that have been filed since we earlier rejected the court processes under Order 5 rule 11 as read together with rule 13 of the Courts (High Court)(Civil Procedure) Rules, 2017. Hence, the documents which we rejected herein are as though they were never filed. That is the consequence of our earlier direction. If we did not so conclude in the first place, then we would be justified to order a transfer. But, our direction remains: We decline to issue these processes for they are an abuse of our processes. Counsel is at liberty to resurrect the matter and file it properly at Lilongwe the nearest registry from where the cause of action arose.
12. It is so decided.

**PRONOUNCED** in chambers this 27 October 2024 at the High Court of Malawi, sitting at Blantyre, Principal Registry, Civil Division.



Elijah Blackboard Dazilikwiza Pachalo Daniels  
**ASSISTANT REGISTRAR**