REPUBLIC OF MALAWI

MALAWI JUDICIARY

IN THE HIGH COURT OF MALAWI

MZUZU DISTRICT REGISTRY

CIVIL DIVISION

CIVIL CAUSE NO. 248 OF 2013

Between

LOIS S. MADIKHULA.....	**1ST PLAINTIFF**
MACDONALD MADIKHULA.....	**2ND PLAINTIFF**

-and-

MARY GOBA	**1ST DEFENDANT**
IDESI GOBA.....	**2ND DEFENDANT**

Coram : **Honorable Mr. Justice D.T.K. Madise**
Mr. G. Kadzipatike Counsel for the Plaintiff
Mr. C. Ghambi Counsel for the Defendant
Mr. A. Kanyinji Official Interpreter

Madise, J

JUDGMENT

1.0 Introduction

1.1 In this matter the Plaintiff took out originating summons on 20 November 2013 against the Defendant over a piece of customary land at Chikasa Village in T/A Kafuzila in Nkhotakota. The summons were supported by an affidavit of Lois Madikhula. In opposition to the affidavit in support of the summons, the Defendant Mary Goba stated that this matter was *res judicata* as it had already been adjudicated upon by the Second Grade Magistrate Court sitting at Nkhunga in Nkhotakota the matter being a customary land issue. The Judgment is dated 29 August 2013.

1.2 The Defendants in this matter argue that the judgment of the lower court at Nkhunga was not appealed against nor was a stay granted staying execution of the judgment.

2.0 The Decision

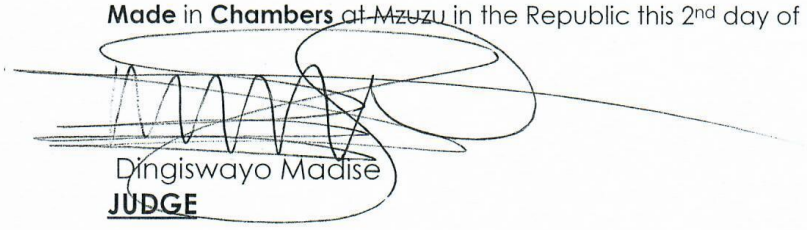
2.1 It is trite law that subordinate courts have power to hear customary land matters. See section 39(2) Courts Act (civil jurisdiction of subordinate courts). In this case the court below made a judgment dated 29 August 2013 which gave the said ppiece of land to the Defendants. The Plaintiff herein was aggrieved but he did not file an appeal within the required time nor did he seek leave to appeal out of time.

2.2 The Plaintiff herein did not apply for a stay of execution of the judgment in the trial court or the High Court. Instead he instituted new proceedings in the High Court as a way to succumventing the appeal process. It is the finding of this Court that in the absent of an appeal or the grant of stay this matter is *res judicata*. The SGM Court at Nkhunga was a court of competent jurisdiction.

2.3 These summons therefore must fall without discussing the merits. It falls on a technicality. The decision of the Second Grade Magistrate Court at Nkhunga stands and must be given the force of law it deserves. The Plaintiff must pay the costs of these proceedings.

It is so ordered.

Made in **Chambers** ~~at Mzuzu~~ in the Republic this 2nd day of December, 2016.



Dingiswayo Madise
JUDGE