



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 97 OF 2015**

BETWEEN:

ESTER NSEU MPULULA.....PLAINTIFF

AND

REUBEN MPULULA.....1ST DEFENDANT

PAUL MPULULA.....2ND DEFENDANT

CORAM: THE HON JUSTICE H.S.B. POTANI

Mr. Meckeus, Counsel for the Plaintiff

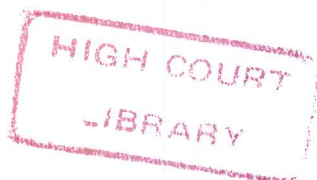
Mrs. Jumbe, Counsel for the Defendants

Mr. Kanchiputu, Court Clerk

RULING

This is an action triggered by the death of one Harrison Mpulula, a husband to the plaintiff.

On March 9, 2016, the plaintiff through an originating summons commenced this action against the defendants seeking various declarations among them that the defendants being adults, the plaintiff has no legal obligation to maintain them and that after the death of her husband she is the sole and absolute owner of all



properties she jointly held with her late husband. Simultaneous to the commencement of the action, the plaintiff sought *ex-parte* an injunction order directing the defendants to vacate the plaintiff's premises known as Livonia Lodge and restraining the defendants from interfering with the peaceful enjoyment of the plaintiff's estates.. It was directed by the court that the application for an injunction should be heard *inter parties* and accordingly the hearing took place on April 25, 2016.

The affidavits filed by the parties show that Reuben Mpulula, the deceased, who died in September, 2015, was a husband to the plaintiff and a biological father to the defendants. The plaintiff is a step mother to the defendants and at that time of the death of the deceased both defendants were staying with the plaintiff and the deceased as a family unit. According to the plaintiff, the 1st defendant is aged 29 and the 2nd defendnat is aged 28 but according to the defendants they are aged 27 and 26 respectively. The deceased and the plaintiff were running several businesses among them a maize mill, houses and two lodges known as Haest and Livonia. Following the death of the deceased, the plaintiff and the defendants continued staying together but later disagreements surfaced between the two sides at the center of which is Livonia Lodge. There are counter accusations as to what led to the disagreements. On the one hand, it is the plaintiff's account is that in December, 2015, a few months after the demise of the deceased, the defendants began misbehaving and were disrespectful to her claiming that the property she acquired with the deceased was theirs and demanding to take full control thereof to the extent that they went ahead and advised tenants and clients to be paying rentals and lodging fees to them and not the plaintiff. They eventually occupied Livonia Lodge and are refusing the plaintiff access to it with threats to deal with her should she attempt to step her foot there. On the other hand, the defendants allege that

disagreements arouse because they wanted to hold some entertainment activity at one of the lodges but this did not please the plaintiff and she locked them out of the house they used to stay with her. As they had nowhere to stay they decided to occupy one of the rooms at Livonia Lodge. According to the defendants before the disagreements they never claimed and/or collected any rentals or lodging fees but only started claiming and collecting lodging fees from some lodgers at Livonia Lodge for their upkeep and that they have never refused the plaintiff access to the lodge.

It is the plaintiff's contention that following the death of her husband, she is the sole and absolute owner of all the properties she jointly owned with her husband and that the defendants being adults, she has no legal obligation to maintain them and that by taking over Livonia Lodge they are depriving her of the income she needs to service the loans she jointly obtained with her husband using some of their jointly owned property as security as such she runs the risk of losing it which will cause irreparable damage. As for the defendants their contention is that although they are adults, they are entitled to benefit from the property because they are dependants because before the death of the deceased, they were being supported from the estate to meet their educational and basic livelihood requirements but the plaintiff out of greed wants to have it all as she proceeded to obtain letters of administration of the estate despite the fact that the matter was referred to the office of the District Commissioner for Phalombe for resolution.

The grant or refusal of an injunction is a matter in the discretion of the court. The discretion has to be exercised on sound basis and to that end, there are principles and guidelines courts apply in considering whether to grant or refuse an application for interlocutory injunction as authoritatively enunciated in **American Cyanamid**

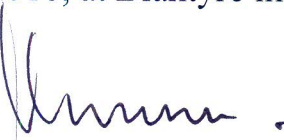
Co. v. Ethicon Ltd [1975] A.C. 396; [1975] 2 W.L.R. 316. Broadly put, when an application is made for an interlocutory injunction the initial question that calls for consideration is whether there is a serious question to be tried. If the answer to that question is in the affirmative, then the court must move on to consider whether damages be an adequate remedy for a party injured by the court's grant of or refusal of an injunction and if not where does the balance of convenience lie. The first is a threshold requirement which means if the answer is in the negative the application would collapse there and then as it would lack foundation. And having said that, it must be stated at this juncture that it is no part of the court's function at this stage of the matter to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial. This is because the evidence available to the court at the hearing of the application for an interlocutory injunction is incomplete as is given on affidavit and has not been tested by oral cross-examination.

In the case at hand, it is important to appreciate that the bone of contention revolves around beneficial interests in property forming part of the estate of the deceased. From the evidence before the court, there is no dispute that the property was acquired when the plaintiff was married to the deceased and therefore the court would find that the plaintiff has established an arguable claim of right over the property. There is also no dispute that the property was pledged to some financial institution as surety for a loan and because of the ongoing wrangles, especially the defendant's occupation of Livonia Lodge, have stifled the generation of income for the scheduled repayment of the loan thereby exposing the property to disposal by the lenders in order to recover the sums due on the loan. It should

quickly be said that in the event that the property is lost due to default in servicing the loan, then there will be nothing to fight for and both parties would stand to lose. It would result in loss that cannot be compensated for in damages. Even the defendants themselves would not be able to source out money for their education which they say they have always had from the estate. It would therefore mitigate the risk of injustice to the plaintiff and to an extent the defendants also, if an order that would facilitate the smooth running of Livonia Lodge is made. The balance of convenience therefore tends to lie in favour of granting the injunction sought by the plaintiff. It is therefore accordingly ordered that the defendants should within 48 hours from the service of this order vacate Livonia Lodge and allow the plaintiff to smoothly operate it until the determination of the plaintiff's action or further order of the court.

On costs this being an interlocutory application and as the facts seem to show that the defendants have no means of income of their own, the court would exercise its discretion by ordering that each its own costs incidental to this application.

Made this day of May 12, 2016, at Blantyre in the Republic of Malawi



H.S.B POTANI
JUDGE