

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 580 OF 1986

BETWEEN:

THE ADMINISTRATORS OF THE ESTATE OF

F.D. MSONTHI.....PLAINTIFFS

-and-

TIKUMBE LIMITED.....DEFENDANTS

Coram : MTEGHA, J.

Chirwa of counsel for the Plaintiff
Nyirenda of counsel for the Defendant
Mkumbira, Official Interpreter
Phiri, Court Reporter.

JUDGMENT

There are two applications in this matter, and for convenience's sake I decided to deal with both of them at the same time because both applications have been made because of an order which I made on the 6th August, 1986. On that day I granted the plaintiffs an interlocutory injunction restraining the defendants from closing an existing access road to the plaintiffs' house situate at Plot No. GC 384 until the determination of an action filed by the plaintiffs against the defendants.

The first application which was made to the court was that of the defendants in which they are asking me to vacate or dissolve the order which I made. Before I dealt with this application, which was filed on the 12th September, 1986, the plaintiffs too filed an application on 26th September, 1986 requesting me to commit one WILLIE HANECK CHIPENGULE PHIRI, one of the defendants' directors, to prison for contempt of the court order which I made on the 6th August. I decided to hear both these applications together in open court.

Basically, the defendants want me to vacate the order because, they stated in their affidavit, that since the granting of the order for injunction the defendant has constructed and completed an alternative access road. The road has been shown on the site plan attached to the affidavit.

In the course of hearing these applications it has transpired that indeed the access road was closed in violation of the order which I made. The defendants admit this and they state they are very sorry, but they further state that it was in the belief that since an alternative access road has been made, they thought they were not acting contrary to the order. It has also transpired in the course of hearing the evidence, that it is not correct, as stipulated in the plaintiffs affidavit, that no alternative access road has been constructed. On the contrary, access road has been constructed, so that the defendants did not make any false allegation or deceived the court when they stated these facts in their affidavit.

It is clear that the defendants were in breach of the order. In such circumstances, the court has a number of options, such as to commit the defendants to prison, or order damages or to order a fine or to order the defendants to pay the costs. In the present case the defendants apologised to the court and mitigated the breach by constructing an alternative access road. Be that as it may, such apology and mitigation do not absolve the defendants from the breach.

I will now turn to the substance of the defendants' application to vacate or dissolve the interlocutory injunction. Both counsel referred me to some very useful authorities, but it appears to me that on the facts before me, the breach is complete and the purpose for which I granted the injunction has been rendered nugatory unless I order that the access road be reopened by pulling down the walls which have been so erected.

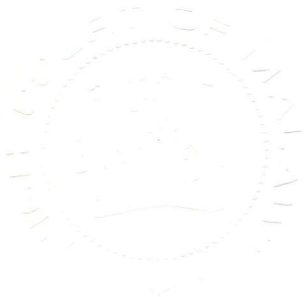
As I have stated earlier in these proceedings, the purpose of granting an interlocutory injunction is to preserve the status quo of the parties until the action, which is before the court, is determined by establishing the parties rights. In the present case an action has been filed by the plaintiffs in which they are seeking a permanent injunction to restrain the defendants from closing the existing access road - precisely that the interlocutory injunction was granted for.

It is perhaps with the purpose of ridiculing the court on the part of the defendants now to seek that the injunction should be discharged. If I do accept the defendants' application it is tantamount to adjudicating the action itself. I therefore decline to discharge the interlocutory injunction.

It is clear that the defendants have disregarded the court's order not to close the access road until the determination of the action. The plaintiffs were right to seek committal of the defendants. But, as was pointed out by counsel for the defendants, the courts are very reluctant to commit to prison for civil wrongs. There are, however other remedies. I can award damages; but if I do so in this case it will appear as if the action has been determined. I can impose a fine and award costs to the plaintiffs.

I am of the view that this course is the right one.
I impose a fine of K300.00 or in default 7 days' imprisonment with
hard labour. I also award costs for this application to the
plaintiffs. The fine to be paid within 24 hours.

Pronounced in open court this 16th day of December, 1986
at Blantyre.



H. M. Mtegha
H. M. Mtegha
JUDGE