

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 664 OF 1988



BETWEEN:

MRS F. MACPHERSON PLAINTIFF

- and -

MR. E.F.W. MACPHERSON 1ST DEFENDANT

- and -

MRS J.M. MACPHERSON 2ND DEFENDANT

- and -

D.W.K. MACPHERSON LIMITED 3RD DEFENDANT

Coram: The Hon. Mr. Justice Mtegha
 Mbendera, Counsel for the Plaintiff
 Kadyakale, Law Clerk

RULING

On 29th November last I granted an exparte interlocutory injunction to the plaintiff in this case. I reserved my reasons for doing so. I now proceed to give those reasons. The interlocutory injunction that I granted was in the following terms:

"That the defendants and each of them, whether by themselves or by any of them or by their directors, officers, servants or agents or howsoever otherwise be restrained and that an injunction be granted restraining them from unlawfully or forcibly evicting the plaintiff and throwing out her belongings and or locking her out of the house where she is now residing at Kanongo Estate, Namitete in Lilongwe District of the Republic of Malawi until after the trial of this action."

This application was made under O.29 R.1 of the Rules of the Supreme Court.

The facts of the case as shown in Mr. Savjani's affidavit in support of the application are clear. The plaintiff, Mrs F. Macpherson is the mother of the first defendant, Mr. E.F.W.

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Macpherson. The second defendant is the wife of the first defendant. The three are the sole shareholders in the third defendant company. It has been deposed that the third defendant company owns a tobacco estate on a farm known as Kanongo Estate in Lilongwe District. The estate was developed by the plaintiff and her late husband soon after their marriage in 1935. At the estate a house was built on it in which the plaintiff resided until her husband died. Before the husband died another house was built for the first defendant in which both the first and second defendants are now residing.

Initially the plaintiff after the death of her husband was the major shareholder of the issued shares until at a meeting of the shareholders on 2nd and 5th February, 1987 when the first and second defendants required the plaintiff to consent to the issue of 800 unissued shares to the first defendant with the object of giving the first and second defendants a combined majority interest in the defendant company. Under pressure the plaintiff reluctantly agreed to the issue of the 800 shares. The consent to the issuance of the 800 shares was on condition that "the company, the first defendant and the second defendant should agree, guarantee and covenant that the plaintiff should continue living in the house and that the defendant company should continue to provide her with a company vehicle for her sole use and that the plaintiff should continue enjoy and to receive from the company all benefits that she then enjoyed". An agreement to this effect was entered into on the 5th February, 1987 signed by the plaintiff and first defendant. However, things did not end there. On 28th October, 1988, in the presence of Mrs Isabel Raphay, a daughter of the plaintiff and a sister to the first defendant, the first defendant asked her to vacate the house and requested her to live in a flat in Lilongwe. She declined the offer. When the plaintiff declined this the first defendant is reported to have said:

"If you do not I shall pick you up bodily and remove you and send your katundu via Glens Transport to Zomba" - meaning the defendant company's house in Zomba."

On 7th November, 1988 the first defendant advised the plaintiff that he had made provision for the plaintiff to stay at Newlands Home. On 15th November the first defendant went to the plaintiff and asked her to move.

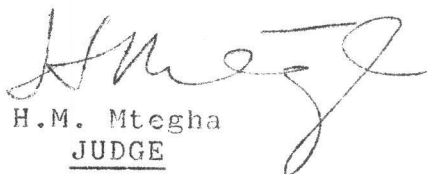
It was in Mr. Savjani's affidavit that the plaintiff, knowing the first defendant's behaviour, she fears that the first defendant will carry out the threat to physically and bodily remove her and her belongings from the house - hence this application.

This then is the sad affair between the plaintiff on one hand and her son and his wife on the other.

It is a well established rule that the basic purpose of the grant of an interlocutory injunction is to preserve the status quo until the rights of the parties have been determined in the action. This remedy is discretionary and temporary. The affidavit of the applicant must show that there is a serious question to be tried.

I have read the affidavit in this case. I am of the view that there is a serious question to be tried. The plaintiff might succeed in the action. It is right and proper to preserve her rights and privileges until the determination of the case. For these reasons I granted her the interlocutory injunction.

MADE in Chambers this 1st day of December, 1988 at Blantyre.


H.M. Mtegha
JUDGE