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IN THE HIGH COURT OF MALAWI, BLANTYRE
PRINCIPAL REGISTRY

CIVIL CAUSE NO.721 OF 1987

BETWEEN:

MRS. HELLEN MUNTHALI PLAINTIFF

AND

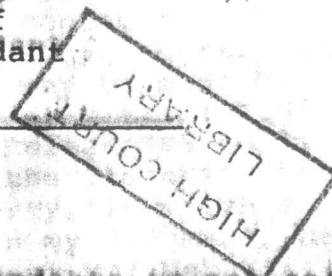
THE NEW BUILDING SOCIETY

DEFENDANT



CORAM: BANDA, J.

Kaliwo, Counsel for the Plaintiff
Makhalira, Counsel for the Defendant
Mkumbira, Clerk



R U L I N G

This is an application by the defendants to set aside an interim injunction which I granted on 8th December, 1987. The reason for seeking such an order is that the plaintiff has no locus standi and has therefore no right to apply for an injunction in the matter.


It is Mr. Makhalira's submission that since the Administrator General is administering the deceased's estate the plaintiff, who is the wife of the deceased, cannot surpass the Administrator General and apply to court for an injunction on rights which arise from a mortgage between the defendants and the deceased. Mr. Makhalira concedes that the plaintiff is a beneficiary of the deceased's estate. Mr. Makhalira has referred, in support of his contention, to the various correspondence which passed between his clients and the Administrator General. He has contended that from this correspondence it is clear that it was only the Administrator General who had the right in the estate and that it was only the Administrator General who could apply for an injunction. It was also Mr. Makhalira's further contention that the procedural steps which are required to be followed under Section 19 of the Law of Property and Conveyancing Act 1881 were followed. He submitted, therefore, that the injunction was obtained on suppression of facts as, he contended that, at the time the injunction was being sought, the provisions of Section 19 had been complied with.

Mr. Kaliwo, on the other hand, has submitted that the injunction which was granted was proper and fair in the circumstances. He has contended that the injunction is only

intended to prevent the sale of property until the issues between the parties have been determined at the trial. Mr. Kaliwo has submitted that the injunction was properly obtained and that it should not be set aside. He has submitted that the plaintiff is a beneficiary in the deceased's estate and that as such she has sufficient interest in the estate to enable her to apply for an injunction. Mr. Kaliwo has once again submitted that the proposed sale of the property was unlawful because, he has argued, the provisions of Section 19 of the Law of Property and Conveyancing Act 1881 were not complied with. He has contended that the correspondence which has been exhibited before this court does not constitute the procedural steps which Section 19 envisages.

I have carefully considered the submissions which both counsel have made before me. I have also considered the correspondence that has been placed before this court. An application for granting of an injunction may be made by any party to a cause or matter before or after trial vide Order 29/1 of the Supreme Court Practice Rules 1985 Edition at page 454. There can be no doubt that the plaintiff here is a party to a cause. The sale of property, in which a person has a beneficial interest would, in my judgment, be an infringement of that interest. To accept Mr. Makhaira's contention would mean that a beneficiary of any estate can look on helplessly as the property in which he or she has a beneficial interest is being dissipated or damaged. I would find it difficult to accept that as a correct proposition of law. I am satisfied that a beneficiary has a sufficient interest in the deceased's estate in which he or she has a beneficial interest to entitle him or her to maintain an application for an injunction. Accordingly I find that the plaintiff in this case had a sufficient interest in the deceased's estate to entitle her to apply for an injunction. I am further satisfied that even if I am wrong in this finding, the procedural steps which are required to be satisfied before a property can be offered for sale were not complied with in the instant case. I would therefore find that the proposed sale of property was unlawful. In view of my findings above, I am satisfied that this application cannot succeed and it is dismissed with costs.

MADE in Chambers this 29th day of January, 1988 at Blantyre.


R.A. Banda
JUDGE