

31 Oct 1990  
IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

HIGH COURT  
LIBRARY

CIVIL CAUSE NUMBER 880 OF 1990

CCB  
BETWEEN:

RAJNI KANI NANALAL NATHWANI ..... 1ST PLAINTIFF  
CHANDULAL C. TANA ..... 2ND PLAINTIFF  
LAXMIDAS JAMNADAS KHODA ..... 3RD PLAINTIFF

and

A. W. MTAWALI ..... DEFENDANT

CORAM:

MTEGHA J.

Nyirenda of Counsel for the Plaintiffs  
Makhalira of Counsel for the defendant  
Kholowa - Court Clerk

11 NOV 1991

### JUDGEMENT

On the 11th October, 1990 I dismissed this application for an interlocutory injunction. The plaintiffs were applying for an order that the defendant, whether by himself, his servants or agents or whosoever be restrained from recovering possession of plot BW 137 under a distress warrant until further order. I reserved my reasons for refusing to grant the interlocutory injunction. These I do now proceed to give:

The brief facts of the case are these. The plaintiffs are tenants of the defendant who owns plot No BW 137 along Sharpe Road in the City of Blantyre. They have been tenants for at least a period of four years. They were monthly tenants paying their rent in arrears. The subsequently the property was sold and on 18th July 1990 the defendant wrote to his agents - Property Auctions Ltd as follows:

"I write to advise you that the above-mentioned property is to be sold to Mr Denn. Therefore, please advise the ~~tenants~~ by giving them one month's notice up to the end of August, 1990 i.e. 31st August, 1990 to vacate the premises ....".

On 29th August, 1990 Property Auctions wrote to the defendants in these terms: "We are writing to advise that the property which you are tenanted has been sold by the Landlord to another party.

The new owners would like to have vacant possession of the property and in view of this, we have been requested to give you notice to vacate the premises on or before 30th of September 1990 ...".



On 5th September 1990 the plaintiffs answered this letter in these terms:

"We refer to your letter ..... dated 29th August 1990 which was delivered to us on 4th September, 1990.....  
Please note that until we find suitable house we will not be in a position to vacate the above premises. Thank you".

Property Auctions Ltd replied on 7th September 1990 advising the plaintiffs that the new Landlord specifically purchased the property for his own use that it was not possible to consider any extension beyond 30th September, 1990. Then on the same day the defendant wrote to the plaintiffs enclosing a copy of the letter he wrote to Property Auctions Ltd and stated, inter-alia:

"Your refusal to vacate the house until and unless you find suitable accommodation is not my concern and cannot hold water in a court of Law. However, on humanitarian grounds I had given you enough notice through Property Auctions Ltd to be passed on to you .....".

On 12th September 1990 the plaintiffs wrote to Property Auctions Ltd and since this letter is important, I reproduce it hereunder in extenso:

"We refer to your letter ..... of 7th instant and would wish to inform you that we are looking for alternative accommodation for ourselves, but as you know it is not easy to get a house within a short period of 20 days which you gave use, hence we ask you for an extension of minimum of 90 days to enable us look for an alternative accommodation. We also refer to Mr Mavali's letter dated 7th instant on the same issue where he has stated that he wrote you a letter dated 18th July, 1990 to give us notice whereas you gave us a letter to vacate the house on 4th September 1990 you should have given us enough time for us to look for alternative accommodation".

We have been staying in this house for the last several years and to vacate it within a short period is not fair. However, if we manage to get a house before 90 days then of course we will vacate it. By copy of this letter we also request Mr Derr to understand our position and kindly give us time of minimum 60 days if not 90 to enable us to look for alternative accommodation".

The defendant was adamant. He went to Makhallira & Co who obtained a distress warrant on 19th September 1990 for arrears of rent and vacant possession. Meanwhile, on 14th September the plaintiffs wrote to the defendant that they would vacate the house by the end of September.

On 24th September the plaintiffs issued a writ claiming damages for trespass, breach of covenant for quiet enjoyment and an injunction to restrain the defendant etc from trespassing, continuing to breach the covenant for quiet enjoyment and unlawfully attempting to recover possession of the plot under a distress warrant.

Then an ex parte application was made and on 27th September and I granted an extension of 10 days within which to bring an inter parte application for an interlocutory injunction. I heard that interlocutory injunction and as stated earlier on I dismissed the application for an interlocutory injunction and vacated the order which I made on 27th September. There have been a number of affidavits to support the application.



Mr Nyirenda has argued that indeed there was a tenancy agreement which was a monthly tenancy, and the rent was payable in arrears. Paid up cheques were exhibited to show that indeed there was a monthly tenancy payable in arrears. This the defendant agrees. It was, however, Mr Nyirenda's contention that being a monthly tenancy, the plaintiffs were entitled to one month's notice and that since the letter of notice dated 29th August, 1990 only reached the plaintiffs on 4th September giving them notice to vacate by 30th September 1990, the notice was not valid, but had it been given on 1st September, it would have been valid.

It was also contended that on 14th September the defendant went to the plot and demanded that the plaintiffs should give him a letter to state that they would vacate the premises on 30th September. This the plaintiffs did, but it is contended that it was under duress. This note, which was written to the defendant stated:

"Re Plot No BW 137 Sharpe Road BT

With reference to the matter on the above issue, we will vacate the property by end of this month as stated in your letter (Property Auctions Ltd letter").

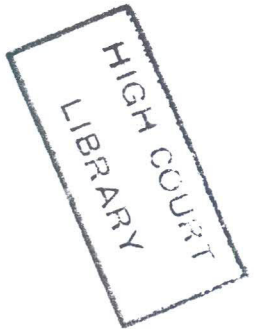
I do not want to go into details as to the effective date of notice, but if Mr Nyirenda contends that if the notice had been in the hands of the plaintiffs on 1st September the notice could have been valid, then he could equally have said that if the defendant gave the plaintiffs up to 3rd October the notice could have been valid.

Indeed, the plaintiffs continued occupying the premises until the writ was issued. Again, while not trying to hear and determine the issue on affidavits, there is no proof that the letter of 14th September was obtained by duress. It clearly shows that the plaintiffs accepted to vacate the premises and as such, even if the notice was defective, it had been accepted by the plaintiffs to vacate the premises.

As Mr Makhalira had correctly pointed out, the principles upon which the court will grant an interlocutory injunction were outlined by Lord Diplock in the American Cyanamid Co v Ethicon Ltd case (1975) AC 396. These were summarised as follows:"

- "(1) The plaintiffs must establish that he has a good and arguable claim to the right he seeks to protect;
- (2) The court must not attempt to decide this claim on affidavits; it is enough if the plaintiff shows that there is a serious question to be tried.;
- (3) If the plaintiff satisfies these tests, the grant or refusal of an injunction is a matter for the exercise of the court's discretion on the balance of convenience".

Did the plaintiffs have a good and arguable claim to right they are seeking to protect? The answer is in the negative. Even Mr Nyirenda did not raise this issue to show that the plaintiff had a right to be in occupation for another 60 or 90 days. It is quite clear that the plaintiffs knew that they were entitled to one month's notice only and this they accepted. The plaintiffs have not satisfied this test. I could not therefore grant them an injunction.



Mr Nyirenda also raised the question as to whether the defendant was right to try to repossess the premises by distress warrant. It is unnecessary for me to go into examination of the propriety or not of the distress warrant.

It appears to me that the plaintiffs, in bringing this matter to court were trying to buy time. This is clearly an abuse of the court process. For these reasons, I declined to grant the injunction and vacated the injunction which I granted on the 27th September.

MADE in Chambers this 31st day of October, 1990 at Blantyre.  
at Blantyre.

  
H. M. Mtegha  
JUDGE