

15 Oct 1990

MS

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO.731 OF 1990

BETWEEN:

OLIUNGA FARMS LIMITED PLAINTIFF
AND
THE ADMINISTRATOR GENERAL DEFENDANT

CORAM: BANDA, J.

Mbalame, Counsel for the Plaintiff
Nyirenda, Counsel for the Defendant
Liyao (Mrs), Court Clerk

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RULING

This is an application for an order to discharge the interlocutory injunction which this Court granted on the 27th of August, 1990.

Mr. Nyirenda seeks this order on three grounds, namely that the correct procedure was not followed. He submitted that the practice direction which is reported in (1983) 1AER 1119 was not followed. Mr. Nyirenda contended that under that practice direction, any ex-parte application must be accompanied by an affidavit containing clear and concise statements which give rise to the claim against the defendant and also it must contain facts which might entitle the plaintiff to an interlocutory relief. Mr. Nyirenda further attacks the interlocutory injunction on the ground that the plaintiff had suppressed certain facts. He contended that in ex-parte applications the plaintiff must disclose all the facts and that nothing must be suppressed. Among the facts which, it is contended were not disclosed, were that the plaintiffs are indebted to the Commercial Bank of Malawi to the extent of K364,000.00 and that meetings were called to discuss the affairs of the company. The third ground on which Mr. Nyirenda seeks to discharge the injunction is that the injunction granted is not in the interest of the company or in the interest of the deceased director.


Mr. Mbalame, on his part, has rested his argument on the simple ground that the defendant has no locus standi in this matter in that no letters of administration or probate have been exhibited to show that the defendant has formally been appointed. Mr. Mbalame has also contended that the defendant, as a government officer, has no right to take over a company and run its affairs when there are two directors who are willing to continue to run the company.

The issue, in my view, is whether the Administrator General has the right to act in the manner he did. It is not disputed that no letters of administration or probate have been granted to him yet. It was Mr. Nyirenda's submission that the Administrator General is in the process of making such an application. But even in the case where the Administrator General has been granted letters of Administration or probate, would his conduct in this case be right and proper? It seems to me that the duty of the Administrator General, as a personal representative of a deceased person, is to protect the interest of the deceased estate. The complaint against the Administrator General is not as a personal representative but rather against the way in which he has purported to exercise his duties in relation to the interest of the deceased director of the plaintiff company. It is not right, in my judgment, for the Administrator General, even where he has been properly appointed, to arrogate to himself the duty of running the plaintiff company. His interest is and would only be the protection of the estate of the deceased director. The fact that the plaintiff company is indebted to the Commercial Bank of Malawi and that the deceased director guaranteed that debt does not, in my view, give the Administrator General the right to run the affairs of the company when there are two directors who are alive and willing to continue to run the affairs of the company. Although one director of the company has died, the company continues to exist.

I have carefully considered the arguments which Mr. Nyirenda has advanced but I am not persuaded to the view that the interlocutory injunction was irregularly granted. It is interesting to note that in the Practice Direction which Mr. Nyirenda cited, specific attention is drawn to the provisions of Order 29, rule 1 which requires the issue of a writ and the swearing of an affidavit in support of an ex-parte application for an injunction. It seems to me that this is precisely what the plaintiff company did in this case. A writ was issued and was properly endorsed and there was an affidavit in support of an ex-parte application for an injunction. It is clear to me that the Practice Direction cited does not overrule the provisions of Order 29/1.

I am satisfied that the balance of convenience is on the side of continuing the interlocutory relief to enable the two remaining directors to make the necessary arrangements for the company to continue its operations. I would therefore dismiss this application but I believe it is right and proper for the plaintiff company to give an undertaking as to damages and I so order.

MADE in Chambers this 15th day of October, 1990 at Blantyre.


R.A. Banda
JUDGE