

Deputy Registrar
Dfm

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO.453 OF 1992

BETWEEN:

G.L. KALIMA (MALE)
(INTENDED PLAINTIFF).....APPLICANT

AND

F. MATHOTHU (FEMALE)
(INTENDED DEFENDANT).....RESPONDENT

Coram: CHATSIKA, J.
Nkhono, Counsel for the Applicant
Mthukane, Law Clerk

RULING

This is an ex parte application made by an intended plaintiff to an intended suit for an injunction. The applicant seeks an injunction to restrain the respondent from trespassing or otherwise encroaching upon his piece of land situate at plot LK 578, Likubula in the City of Blantyre. The application is supported by an affidavit deposed by the applicant.

No writ of summons has yet been issued in this matter and the application is made under 0.29(1)(3) of the Rules of the Supreme Court. Before I can entertain an application under this rule, which is made before the filing and issuance of a writ, I must be satisfied not alone that the matter is urgent but also that strong grounds exist which justify the making of the application ex parte. In his affidavit the applicant states that he is the owner and the title holder of the parcel of land in question. He has stated that the respondent entered upon the land and committed certain acts of trespass in that he dug upon the land, made some ridges on it and removed the applicant's beacon thereby destroying the boundaries to his land. In particular the applicant stated further in his affidavit that on or about the 9th of April, 1992 the respondent entered upon the land and beat up and chased away the applicant's employee who was doing some work on the land. This action resulted in the applicant being prevented from doing any work on his land. The applicant has expressed his apprehension that if these acts of trespass are not arrested more acts of trespass may be committed on the land and that irreparable damage may be caused to it.

I have observed from the documents accompanying the application that the land is small in size - only 2.486 hectares. Acts such as those deposed in the affidavit, especially at the rate at which they are alleged to be committed, could indeed cause considerable harm to a piece of land of about that size.

Counsel for the applicant has given his undertaking to this Court that the intended writ is in the process of being prepared and that it will be filed as soon as practically possible. The words "as soon as practically possible" received judicial acclamation, especially in connection with the filing of a writ preceded by an application for an injunction (see P.S. Refsons & Co. Ltd. v. Saggars & Another and Other Applications (1984) 3 All E.R. p.111). It is hoped that Counsel will take heed of the observations which were expressed in that case in connection with the phrase.

Before granting an injunction which is sought I need not be satisfied as to the strength of the applicant's case as to whether he shall succeed or not in the main trial. All I have to be satisfied with at this stage is that there exists strong grounds to justify making this injunction.

I am satisfied, having gone through the affidavit supporting the application and having heard from Counsel, that any delay in granting the injunction sought in this matter could result in considerable damage being occasioned to the land in question. Accordingly an interim injunction is hereby granted and the respondent is hereby restrained, whether herself or by her servants or agents or otherwise whatsoever from entering on the land and committing any acts of trespass or encroaching upon it in any manner until a further order is made upon the following conditions.

- (a) that the applicant files the intended writ on or before Wednesday, the 22nd of April, 1992;
- (b) that there be liberty to discharge or vary this order on 48 hours' notice in the meantime;
- (c) that the costs of this application be reserved.

Made in Chambers this 15th day of April 1992 at Blantyre.


L.A. Chatsika
JUDGE