

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 1401 OF 1993

BETWEEN:

THE ADMINISTRATOR GENERAL.....PLAINTIFF

AND

ALLIMARDAN H B KHAN.....DEFENDANT

CORAM: MTEGHA J
B Mhango of Counsel for the Plaintiff
Chizumila of Counsel for the Defendant
E Manondo (Mrs) Official Interpreter

RULING

This application has been brought by the plaintiff under Order 52 Rule 1 of the Rules of the Supreme Court for an order for committal against the defendant for contempt of court.

The brief history of the matter for purposes of this application are these:

On 17th December 1992, Mtambo J made an order restraining the defendant, his agents, employees or whomsoever from carrying out or continuing carrying out any development on plot 28/9 Alimaunde in the city of Lilongwe until after the trial of the action which was pending. It appears that the defendant did not comply with this order.

When it was noticed that the defendant was not complying with the order, an application for committal was made before Mtambo J and on 17th September 1993 he made the following order:

"Any way, I have said that I am satisfied that the defendant is guilty of contempt of court by disobeying the court order granted on December 17, 1992. I have, however, decided that instead of committing him to prison I grant an injunction against the repetition of the acts of contempt whether by himself, his servant agents or whosoever until after the determination of the action now pending before the court with costs to the plaintiff."

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The present application seeks, as I have pointed out, that the defendant be committed to prison for disobeying this order.

Mr Chibesakunda, the Administrator General has deposed in his affidavit, that defendant has continued and is continuing to carry on construction works on the said property.

When this application came before me on 25th November 1993, Mr Chizumila, for the defendant, informed court that, he had not read the papers pertaining to this application because he had just arrived the previous day from Lilongwe and had not been able to contact the defendant so that the defendant could give him instructions. He had however, informed the defendant on previous occasions, to stop carrying on construction works. Mr Chizumila was therefore asking for an adjournment. Despite objections by Mr Mhango I granted the adjournment to 2nd December 1993 when I heard the application.

It has been submitted by Mr Mhango, that despite the orders of the court of 17th December 1992 and that of 17th September 1993, the defendant is still carrying on construction works and he is presently on the roofing stage. All the development up to roofing stage has been done in contravention of the two orders. He has further submitted that the contravention of the orders by continuing building in contravention of the injunctions, the defendant was deliberately doing this with the intention of prejudicing the outcome of the trial, and he was clearly interfering with the administration of justice.

On the other hand, Mr Chizumila informed the court that he had contacted his client so that he could be present at the hearing but he has been informed by his secretary that the defendant had developed high blood pressure and he could not come. However, the defendant told Mr Chizumila that he stopped building and as such, he, Mr Chizumila cannot make any admission on behalf of his client. Mr Chizumila then went on to attack the two orders as to the mode in which they were made, the procedural errors which the court made when making the orders and so on.

In my opinion these question raised by Mr Chizumila should have been raised by way of an appeal or by an application to vacate the injunctions. For the purposes of this application, these points are not relevant. I therefore disregard them. Contempt of court is a very serious offence. If a party to proceedings does not comply with a court order, the very foundation, the very authority of the court is undermined. Contempt is the disobedience to an order of the court by a party to the proceedings. **In Re Attorney General's Application 1962 1 QB 534 at p561 it was stated that "Any conduct which amounts to an interference with the administration of justice is a contempt, criminal in nature.... there is only one question to be posed in any case, and that is whether the conduct is calculated (that is likely) to result in interference with the administration of justice."**

It is quite clear that by refusing to comply with the two injunctions which the judge had made, the defendant was clearly in contempt of court. His non compliance is likely to prejudice the outcome of the main trial. I find him guilty of the contempt of court, and I am perfectly entitled to make an order for committal.

I have carefully looked at order 52 of the Rules of Supreme Court. I am satisfied that since the liberty of the individual is at stake, all necessary procedural requirements have been met. I therefore commit the defendant to prison for 7 days for disobeying the injunctions which directed him to refrain from continuing construction works on plot 28/9 Alimaunde in the city of Lilongwe. The plaintiff to have costs of this application .

PRONOUNCED in open court this 7th day of December, 1993 at Blantyre.


H M Mtegha
JUDGE

Mr Chizumila: May I have your permission to appeal and suspend the order pending appeal?

Mr Mhango : I object to the application to suspend to committal on the grounds that an appeal should not be used to stay proceedings. No special circumstances have been advanced. Secondly this is contempt of the court's own orders. They have deliberately been breached and flouted. Stay pending appeal will only go to strengthen the defiance of lack of respect, the authority of the court will be undermined. The defendant to be committed forthwith without delays.

Reply : The special circumstances is not there; is an application pending to have the injunction dissolved. If that happens, damages will not be sufficient.

Court : Application to appeal granted. Application to stay committal is refused. The defendant to be committed to prison for 7 days.


H M Mtegha
JUDGE

07.12.93