

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 18 OF 1988

BETWEEN:

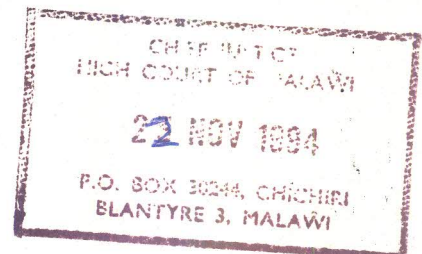
THE REGISTERED TRUSTEES OF
AFRICAN INTERNATIONAL CHURCH.....APPELLANT

AND

THE REGISTERED TRUSTEES
OF AFRICAN CHURCH.....RESPONDENT

CORAM: L.E. Unyolo, J
Chirwa of Counsel for the Applicant
Msiska of Counsel for the Respondent
Kaundama, Official Interpreter
Jere, Recording Officer

RULING



This is an application by notice of motion for an order for an inquiry as to damages. It is made pursuant to 0.29/1/14 of the Rules of the Supreme Court.

Briefly, the facts are that the plaintiffs obtained an interlocutory injunction in this Court on 24th July, 1992 restraining the defendants from building or proceeding with any construction work of whatever nature at Ponda Village, Traditional Authority Wasambo in Karonga District. There was then a dispute between the parties over and concerning the place in question; each party claiming the place to be theirs. The Court further ordered that the injunction should continue until the determination of the main action. As is usual, the plaintiffs gave an undertaking as to damages in case the Court should subsequently be of opinion that the defendants had suffered any, by reason of the injunction. Perhaps I should add that the main action was tried and the plaintiffs lost.

In the present application, the defendants aver that at the time the injunction order was served on them they were in the process of erecting a church which they had built up to roof level. They say that they then stopped all further work in compliance with the said order. It is the defendants case that subsequently the whole edifice collapsed due to rains. They contend that had they not been stopped they would have gone on

to put on a roof on the building and do all the necessary finishing touches in which case the building would not have collapsed. Finally, the defendants contend that they have suffered damage as a result and that the plaintiffs must bear responsibility for the same; upon the undertaking the plaintiffs gave, as indicated above.

Referring to the law, it seems to be established that where an interlocutory injunction is granted upon the plaintiff giving an undertaking in damages, if it is afterwards found that the plaintiff was not entitled to the injunction, an inquiry as to damages may be ordered, though the plaintiff was not guilty of misrepresentation, suppression or other default in obtaining the injunction. See Griffith v Blake (1884) 27 CH.D.474. I have underlined the word "may" to underscore the fact that in principle the question whether an inquiry as to damages should be ordered is a discretionary one for the Court. In Smith v Day (1882) 21 Ch.D 421 the legal position on this aspect was summed up thus:

"The Court is not bound to grant an inquiry as to damages whenever the defendant has sustained some damage by the granting of the injunction; but it has a discretion, and may refuse any inquiry if the damage is trivial or remote, or if there has been great delay in making the application."

Reverting to the present case, it is to be observed, as I have already shown, that the plaintiffs case including their claim for an injunction, failed in its entirety. In other words it was found, upon the trial of the action, that the plaintiffs were not entitled to the injunction they sought. Having heard learned counsel on both sides, I am satisfied and I find that the defendants sustained damage when the edifice they had erected, as described above, fell to the ground. With respect, I don't think that the damage suffered could be said to be trivial considering the nature of the building and the materials and labour that must have been used to build the same. As I understand the total evidence given at the trial of the action, and I would respectfully disagree with the observations of learned counsel for the plaintiffs to the contrary, the building had already reached roof level at the time the plaintiffs obtained and served the injunction order, towards the end of 1992. To my mind, that was too late and I would agree with learned counsel for the defendants that it was not prudent to stop the completion of the building at that stage as that left it exposed and vulnerable to hostile weather conditions.

All in all I am of the view that the plaintiffs ought to pay for the damage that was caused to the church. I can find no basis upon which the defendants can be faulted. In the result, the application succeeds and I accordingly make an order for an inquiry as to damages, as prayed, to be held before the Registrar of this Court on a date to be fixed.

The costs of this application are to be costs in the inquiry.

PRONOUNCED in open Court this 24th day of October, 1994 at Blantyre.

L.E. Unyolo
JUDGE