

Mrs Ansah



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 2180 OF 1999

BETWEEN:

T. MFUNE.....PLAINTIFF

-and-

MISS MPONELA T/A AMOMPO WHOLESALERS.....DEFENDANT

CORAM: KUMITSONYO, J

Nkuna, Counsel for the Plaintiff
Nkhono, Counsel for the Defendant
Mrs Matekenya, Court Official

RULING

The plaintiff in this application for an inter-locutory injunction is seeking to restrain the defendant from keeping the plaintiff's two deep freezers and one MEC three in one stereo systems and two cases of beer. These items were seized and taken away from the plaintiff's shop at Ndirande by four men who were sent by the defendant on 5th June, 1999. The goods were seized and kept by the defendant by way of a lien or otherwise to act as security for money owed by the plaintiff



to the defendant. It was submitted by Counsel for the plaintiff that as a result of this seizure, the plaintiff's business was disrupted and that damages would be difficult to assess. It was further submitted that the amount the plaintiff owed the defendant was far much less than the value of the items seized.

It was argued by Counsel for the defendant that the grant or refusal of an injunction was a matter for the exercise of the Court's discretion on the balance of convenience. It was submitted that since in this case damages would be an adequate remedy, an injunction ought not to be granted. Reading from paragraph 15 of the affidavit in support of the application, there were what the plaintiff believed to be the values of the properties seized. If the plaintiff obtained judgment against the defendant in this action, the Court would easily assess damages.

It was further argued by Counsel for the defendant that an injunction was an equitable remedy. The old adage still reigned supreme. He who seeks redress in equity must come with clean hands. It was submitted that the applicant did not come to Court with clean hands. By admitting that he owed money to the defendant and at the same time seeking an order against the defendant for an injunction, it could not be said that he came to equity with clean hands. He should have applied to the Court for an order for leave to pay the money into Court under Order 29 rule 6.

It has long been established that the law which governs the Courts when considering applications for injunctions was set out in the case of the **American Cyanamid Co. v Ethicon Ltd.** [1975] 1 E.R.504 H.L. The first principle in that case was that the plaintiff must establish that he has a good arguable claim for the remedy that he seeks. In the instant case I have found that the plaintiff has not

established that he has a good arguable claim to the remedy that he seeks. The second principle is that the Court must not attempt to decide the merits of the case between the parties on the basis of the affidavits presented in Court. It suffices if the plaintiff shows that there is a serious issue or issues to be tried. On the facts of this case I am satisfied that the plaintiff has not met this requirement. The third principle is that if the first two principles are met to the satisfaction of the Court, then the granting or refusal of an injunction is a matter for the Court to exercise its discretion on a balance of convenience.

I now turn to consider what the purpose of interlocutory injunctions is all about. It is important to remember always that interlocutory injunctions are not intended for demonstrating that the defendant is clearly in the wrong and that he has no credible defence. It is also no purpose of such relief to enable the plaintiff to get, quickly and before trial, essentially the entire remedy which he seeks in his claim against the defendant. In this case the entire remedy is the restoration to the plaintiff of the seized goods or property. An interlocutory injunction is not supposed to be a remedy for the distress, embarrassment or discomfort experienced when a person feels that he has been wronged. Those are feelings which litigants must bear and tolerate while the wheels of justice move on towards the final determination of the matter in dispute. The purpose of an order for an interlocutory injunction is to preserve the status quo until the rights of the parties have been determined in the action.

In the instant case, is there a status quo to be preserved. The answer would appear to be in the negative. I agree with Counsel for the defendant that this is a case where damages would be an adequate remedy and that those damages could be easily assessed. I am convinced and satisfied that this is not a case where the Court can

grant an interlocutory injunction. The application is dismissed with costs to the defendant.

Made in Chambers at Blantyre this 12th day of August, 1999.



E.B.Z. Kunitsonyo
JUDGE