

20-04-2000

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 741 OF 2000



BETWEEN

H. D. PHOYA ..... PLAINTIFF

VERSUS

MOURAH ALI ..... DEFENDANT

CORAM TWEA, J.

Phoya, of Counsel for the Plaintiff

Tsingano, of Counsel for the Defendant

Moyo (Mrs), Official Interpreter

RULING

This is an application to discharge an injunction granted to the plaintiff, now respondent, ex-parte. The facts as deponed are that the respondent ran a business under the name "Hanibal". He sold second-hand clothing. The plaintiff, for reasons not disclosed, was arrested and kept in custody by police and was eventually deported by the immigration authorities.

It is deponed that the defendant, now applicant, took over the business of the plaintiff. The plaintiff contends that the defendant had



no authority to do so and thus an injunction was granted.

The applicant now contends that there was an informal partnership between him and the respondent. That they ran the business together as home boys : both being of Lebanese origin, he averred that the trade goods now in stock were bought with his own money. He exhibited a document, MFT to support this. It should be mentioned however, that the applicant did not describe what this document is. I don't know whether it is an advise note or not.

The respondent opposes this application. He disputed that there was any partnership at all between him and the applicant. He contended that the business was registered in his name and the goods sent in the name of the business from South Africa and not from Italy as contended by the applicant. He exhibited the Certificate of Registration for the business, advise of goods received and delivery notes, road consignment notes, custom and excise duty receipts, and bills of entry for the goods. He denied having given authority to applicant to trade. Further he contended that the applicant's status of residence in this country is that of a tourist and that he does not own any property in this country. Therefore, if the applicant is allowed to trade he would lose all his goods and never be able to recover damages.

This is the evidence on which I must make a decision.

To begin with, I must say that the applicant has not adduced any evidence to rebut the respondent evidence that he does not have a permit to reside and do business in this country. This being so, this court would be very slow to consider him suitable to trade at all.

I have examined the evidence and with all respect I do not see any evidence on which a partnership can be inferred. I place no weight

exhibit MFT. This document is not backed by any document which would indicate that the applicant cleared any goods in this country. The applicant indicated in this court that in fact the South African Company was a mere clearing agent but the supplier was the Italian Company which forwarded the exhibit MFT. The legality of such a transaction is very questionable, but apart from that, this was not part of the applicant's evidence, it only came out in submissions and possibly as an afterthought. Be that as it may, he had no explanation for the fact that exhibit MFT indicated that the goods were sent to Malawi to the respondent, rather than to South Africa, in the name of the respondent and his business. I totally disbelieve the applicant.

It is my ruling therefore that this injunction must remain intact. This application is dismissed with costs.

**Pronounced** in Chambers this 20th day of April 2000 at Blantyre.



E. B. Twea  
**JUDGE**