

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 214 OF 2002**

BETWEEN:

FRAZER SIMONI MAMBALA.....1ST PLAINTIFF

-and-

MAMBALA MAIZEMILLS (Pvt) LTD.....2ND PLAINTIFF

-and-

AZITA MAGANGA.....1ST DEFENDANT

-and-

LAWRENCE, FANNY, FLORENCE,

LYDIA, FRANK, INNESS, JOANA

AND FATUMA MAMBALA.....2ND DEFENDANT

CORAM: HON. JUSTICE A.C. CHIPETA

W. Msiska; of Counsel for the Plaintiffs

Defendants/Counsel - Absent

Mzungu (Miss), Official Interpreter

RULING

The main action is for damages for trespass to property and for an injunction restraining the defendants from interfering with the business of the second plaintiff and with the houses and personal property of the 1st plaintiff. There is indication on the file that the defendants intend to contest the proceedings. The matter is still in its early stages, having only commenced on 23rd January, 2002, and it will still be a while before it is ripe for hearing.

On the very date that the action commenced, the plaintiff through an ex-parte application,

secured an interim order of injunction against all the defendants restraining them from the interferences above-mentioned, pending the determination of an action on distribution of property in the Zomba Magistrates Court, or until after trial of this action or until further order. By 11th February, 2002 the plaintiffs were back at court with another ex-parte summons. This time it was for leave to apply for committal of five out of the set of second defendants and one of their servants of unknown name. The leave to so proceed with committal proceedings under Order 52 rule 2 of the Rules of Supreme Court was duly granted by Hon. Twea, J. on 12th February, 2002.

Following this the plaintiffs have taken out a Notice of Motion for Committal proceedings. Per affidavit of Mr Alfred Dickson Kimu, a Court Marshall, the Notice of Motion was personally served on Fanny, Florence, Joan, Fatuma, Lydia and Inness Mambala along with its supporting affidavits. Dates of hearing for the Notice of Motion have changed twice, but it is clear that as regards today's date of hearing, per affidavit of service sworn by one Raphael Manja, the concerned defendants were alerted of the hearing date through service on their lawyers on 23rd April, 2002.

I must first observe that the leave sought for the committal proceedings only related to five of the Mambala ladies and one servant of unknown name. The name Lydia Mambala was not included in the application for leave. From the affidavit of service of Notice of Motion however it appears service was extended to her. This was not sanctioned by the leave and I must therefore hold that I do not consider her to be part of the group of second defendants targetted by the present application. Further I must also point out that whereas the leave to commence committal proceedings covered a servant of unknown name, when I examined the affidavit of service of the Notice of Motion, it does not come out clearly that this servant was duly and personally served. In the light of the doubt regarding whether he/she was indeed served with the Notice of Motion for committal, I equally leave this servant out of the team of second defendants targetted by the present application. The present committal proceedings are accordingly strictly restricted to the Mambala ladies bearing the names Fanny, Florence, Joan, Fatuma and Inness and no one else.

Upon reading the Notice of Motion and its supporting affidavits and also upon taking evidence viva voce today from two witnesses which in material particulars has amply buttressed the affidavit evidence, it has become quite plain to me that the five named defendants from the group of second defendants have intentionally, subsequent to the issue and

service of the injunction order herein on them, acted in defiance of the same.

It has been established beyond reasonable doubt that well knowing that, inter alia, they are barred from interfering with the businesses of the plaintiffs, they have deliberately and repeatedly been to the maizemills of the second plaintiff in Ndirande and in Nkolokoti and overthrown the workers from their jobs and done the measuring, charging for, and milling of customers' grain and taken away the money so made, apart from removing parts of the maizemills at times to disable staff working the mills and only restoring them when they are themselves forcefully running the business. This conduct, no doubt in my mind, amounts to contempt of the injunction order which is in force and

which has not yet been set aside. I do hold therefore that the five named defendants are guilty of contempt of court and are liable to committal as prayed in this case. I accordingly order that for the contempt above found proved the five earlier named contemnors in the group of second defendants be committed to Chichiri Prison for a period

of fourteen days from the date of apprehension by police officers of the Malawi Police Service.

Pronounced in open Court the 3rd day of May, 2002 at Blantyre.

A.C. Chipeta

JUDGE