

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1342 OF 2002

BETWEEN:

HAMILTON CHILAMBULA PLAINTIFF

- and -

NATIONAL BANK OF MALAWI DEFENDANT

CORAM: TEMBO, J.

Matemba, SLAA Absent, of Counsel for the Plaintiff

Mitole (Mrs.), of Counsel for the Defendant

Mdala, Court Clerk

RULING

TEMBO, J.: This is an inter-partes application of the defendant to vacate an ex-parte order of injunction which the plaintiff obtained from this Court on 25th April, 2002. By that order, the defendant by itself or its servants or agents was restrained from selling the plaintiff's house located at Machinjiri within the City of Blantyre until the determination of the case then pending before the Court. Either party was free to file an inter-parties application within 14 days of the date of that order.

This application and the date of hearing were duly served on counsel for the plaintiff. However, counsel for the plaintiff and the plaintiff were absent when the matter was called for hearing. No reasons were notified to the Court for their absence. In the circumstances, the Court resolved to proceed with the hearing of the defendant's application in the absence of the plaintiff and his counsel.

The Court, however, had the opportunity to read the affidavit of the plaintiff which had been filed in support of the plaintiff's application for the ex-parte order under review. On the other hand, there was the defendant's affidavit in support of the instant application to vacate the ex-parte order. Besides, the Court had heard learned counsel for the defendant.

On its part, the defendant is requesting the Court to vacate the ex-parte order in that in obtaining the order the plaintiff had lied to the Court; thus, that the ex-parte order under review had been obtained irregularly by suppression of facts.

The facts, as may be gleaned from the affidavits, are that the plaintiff was in fact dismissed by the defendant from its employment. However, the defendant would like to sell the plaintiff's house in that the house was offered as security for a loan the plaintiff obtained from the defendant. The plaintiff is in default of his loan repayment obligation. He had notice served upon him demanding that he pays up his arrears on the amount due for repayment on the loan. The plaintiff has not complied with the notice requiring the plaintiff to do so.

The notice demanding payment had been issued on 24th January, 2002, thus some five months ago. By the date of hearing this application the plaintiff had not yet complied with the notice requiring him to pay up the arrears. Had the facts been so given by the plaintiff to the Court at the time he obtained the ex-parte order or were the plaintiff to have so informed the Court when the Court heard this instant application, the Court would not have granted the ex-parte order of injunction, then, and that the Court would not now make an order for the extension of that earlier order.

In the circumstances, the Court is in complete agreement with the submission of counsel for the defendant that in obtaining the ex-parte order under review the plaintiff did so by the suppression of material facts. That order cannot be allowed to continue now. It is discharged accordingly.

Costs are for the defendant.

MADE in Chambers this 25th day of June, 2002 at Blantyre.

A. K. Tembo

JUDGE