

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO. 896 OF 2007**

- 1. Civil Cause No.894 of 2007
Hamid Raza Vs Arif Mussa**
- 2. Civil Cause No.896 of 2007
The Lilongwe Sunni Foundation Vs
Hamid Raza Khan**

CORAM: HON.JUSTICE CHINANGWA

Chalamanda, Counsel for Hamid Raza
Chilenga, Counsel for the Foundation
Msiska, Court interpreter
Mrs Jere, Court reporter

R U L I N G

The two applications were filed separately by two different legal houses. It was agreed between parties to hear them together in a form of consolidation as it were because of some common facts existing between them.

Mr Rafik Gaffar is the chair of the Lilongwe Sunni Foundation. (herein referred Foundation). The Foundation is angistered

Charitable trust (exRG1 refers). The Foundation is governed by a Constitution (ex RG2 refers). The said Constitution is headed “The Constitution of the Lilongwe Sunni Foundation.”

Mr Rafik Gaffar has deponed in his affidavit that Raza is a former caretaker of their mosque. He is alleged to have been abusive and displayed an unbecoming conduct. On 31st January, 2006 Raza was given a written warning because of what was described as provocative and detrimental actions in the mosque. The warning letter is RG 4. Since his conduct did not improve he was eventually suspended as evidenced by RG5.

On 8th October, 2007 the defendant is alleged to have unlawfully disrupted prayers at Lilongwe Jaame Mosque. Heat the chair and the leadership. He caused a breach of the peace in the mosque. Raza’s conduct was unacceptable and as a result he was thrown out of the mosque. Police were called to contain the situation.

To prevent further breaches the Foundations seeks an order of injunction against Raza so that he is restrained from causing further breaches. The nature of the injunction should restrain him from attending the celebrations on the closing of the Holy month of Rhamandani, the mosque and other activities. Whereas Raza in his application depones to the incident of 8th

October, 2007 at the mosque. There was a misunderstanding because Raza and others did not applaud the chair as he presented presents to the congregation.

The incidents became so nasty that police were called into calm the situation. Raza is being accused to have ignited violence. Hence he is being barred from attending prayers in the mosque by one Arif Mussa and others. He contends through counsel Chalamanda that the action of Arif Mussa breaches Raza's right to freedom of conscience, religion, belief and thought under section 33 of the Malawi Constitution. The right to freedom of worship is protected by a section 44 (2) of the Malawi Constitution. Therefore the Foundation cannot bar him from attending the mosques.

On the application of the Foundation's Constitution. It is argued that the chair or committee of trustees can not bar him because no hearing was done and no opportunity to be heard given to him. Matters pertaining to injunctions are mainly governed by O. 29 RSC. There is a rich caselaw on interlocutory injunctions. The principle to be applied in applications for interlocutory injunction have been authoritatively explained by Lord Diplock in the American Cyanamid Co. Vs Ethicon Ltd (1975) AC 61. They are summarized as follows:

- (1) *The plaintiff must establish that he has a good arguable claim to be the right he seeks to protect.*
- (2) *The Court must not attempt to decide this claim on the affidavits; it is enough if the plaintiff shows that there is serious question to be tried.*
- (3) *If the plaintiff satisfies these tests, the grant or refusal of an injunction is a matter for the exercise of the court's discretion on a balance of convenience (refer O. 29/ 1/2 – General Principles).*

Interlocutory injunctions falls within the discretionary powers of the court. I will proceed on this premises. The starting point is section 33 of the Constitution (Malawi). It provides:

“Every person has a right to freedom conscience, religion belief and thought, and to academic freedom”

Whereas section 44(2) of the Constitution (Malawi) provides:-

“Without prejudice to subsection (1), no restriction or limitation may be placed on the exercise of any rights and freedoms provided for in this constitution other than those prescribed by law, which are reasonable,

recognized by international human rights, standards and necessary in an open and democratic society.”

Whilst it is a fact that the relationship between the Foundation and its member one Raza has gone sour. Each is seeking court's intervention. That is the Foundation seeks a court order to restrain Raza from attending the mosque and other Sunni activities.

In the light of sections 33 and 44 (2) of the constitution. It is my view that this court cannot restrain Raza from worshipping his God in the mosques. Similarly, Raza has to respect the rights of others Sunnis to enjoy worshipping their God. Because they too their religions freed is protected by sections 33 and 44(2) of the constitution.

Secondly, it is my considered view that this court should not get involved in religious conflicts. The Foundation has a constitution which governs its religious affairs. Let the trustees first exhaust their powers provided in the constitution. Refer to section 08:00.

Raza too has to exhaust the remedies available to him under their constitution. Whenever, they fail to resolve their differences, the mother body the Moslem Association of Malawi

or like body to which they are affiliated should be approached to mediate.

The issue in police hands is not a matter for me to air an opinion. On the final analysis no order of injunction is granted on both applications.

Order accordingly.

PRONOUNCED in Chambers on this 16th day of November, 2007 at Lilongwe.

R.R. Chinangwa

J U D G E