

**IN THE HIGH COURT OF COURT OF MALAWI**

**LILONGWE DISTRICT REGISTRY**

**CIVIL CASE NO. 352 OF 2008**

**BETWEEN**

**KENNEY KANDODO AND GOGO KUPINGANA** as

Administrator of Estate of Gogo Jenala Nabanda.....**PLAINTIFF**

**AND**

**KAMZATI CHOMBO** .....**DEFENDANT**

**CORAM: HON. JUSTICE CHINANGWA, J.**

Chilenga, Counsel for the Plaintiff  
Kamzati Chombo, Unrepresented  
Kafotokoza, Court Interpreter

**RULING**

The plaintiffs Kenney Kandodo and Kupingana Nabanda are seeking an order of interlocutory injunction restraining the defendant by himself, servants or agents or otherwise from trespassing onto land known as Deed No.35883 at Kasungu Township In Terms of O.29/1 RSC. The application is supported by an affidavit sworn by Kenny Kandodo, The plaintiffs are represented by counsel Chilenga of T.F Partners.

It is in the affidavit of Kenny Kandodo that the estate of Jenala Nabanda includes leased 50 acres of land at Kasungu Township under registered Deed No. 35883 (ex KK2). The land was acquired in 1969. The said land adjoins the defendant's land on coordinates KK10, KK4 and KU22, (ex KK4). It is alleged that the defendant has trespassed onto the plaintiffs' land and wrongfully claimed same building structures. Counsel Chilenga cited a number of case authorities, among them the ***American Cynamid Vs Ethicon Ltd*** (1975) Ac 396. He also exhibited a judgment in respect of the same landmarked ex KK5.

The defendant Kamzati Chombo appeared in person and self-representing. The defendant forcefully argued that he has not trespassed into plaintiffs' land. The buildings were unlawfully built on his land. He and his family have lived on that land since 1950s. His land is registered deed No. 78958 of 18<sup>th</sup> July 2002. Defendant referred to many letters which give history of the land and disputes arising therefrom. Unfortunately, they are inadmissible as of now.

My starting point is 0.29/1/1 which provides:

*An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.*

O.29/1/2 it states that the usual purpose of an interlocutory injunction is to preserve the status quo until the rights of the parties have been determined in the action. The principle to be applied in applications for interlocutory injunctions was authoritatively pronounced by Lord Diplock in America ***Cynamid vs Ethicon Ltd*** (1975) AC 396. It was summarized as follows:

(1) *The plaintiff must establish that he has a good arguable claim to the right he seeks to protect.*

(2) *The court must not attempt to decide the claim on the affidavits; it is enough if the plaintiff shows that there is a 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.*

I would like to stress the point that the grant or refusal of an injunction is a matter for the exercise of the court's discretion. In the present application the discretion to grant or refuse rests with this court. However, the exercise of such discretion has to be done judicially.

I take into consideration whether financial compensation would be adequate or inadequate. Whether there would be irreparable damage to the land if an injunction is refused. Beside this I take judicial notice of ex. KK5 which plaintiffs

exhibited. In that judgment it was held that the land in dispute belonged to the defendant herein.

Indeed the plaintiff therein was Farmers'World. The defendants were Chamwavi Group Ltd 1<sup>st</sup> defendant and Kamzati M. Chombo 2<sup>nd</sup> defendant. Counsel Chilenga argued that the plaintiff's herein were not a party to those proceedings.

The defendant argued that the plaintiffs herein were 1<sup>st</sup> defendants in those proceedings under the name of Chamwavi Group Ltd. Examining the totality of the affidavit evidence before me. I am persuaded not to grant the interlocutory injunction prayed for by the plaintiffs. Let them proceed to assert their claim in a substantive action. Application for interlocutory injunction fails.

Pronounced in Chambers this 20<sup>th</sup> day of June.2008 at Lilongwe.

R.R. Chinangwa  
**JUDGE**