



JUDICIARY

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 1429 OF 2008**

BETWEEN:

ESTHER KASAPHA.....PLAINTIFF

-AND -

**M'MADI CHINGUWO – AND -1ST DEFENDANT
VILLAGE HEADMAN MTUWENI.....2ND DEFENDANT**

CORAM: THE HONOURABLE JUSTICE E. B. TWEA

Mr Makhambera, of Counsel for the plaintiff

Absent, of Counsel for the defendant

M. Manda – Official Interpreter

RULING

Twea, J

The plaintiff brought this application under Order 52 rule 2 of the rules of Supreme Court, to have the defendants committed to prison for contempt of court.

The plaintiff, on 2nd June 2008 took out a writ of summons claiming damages for trespass to her land and an injunction against the defendants drilling a bore - hole on it. In the interim she applied and was granted an interlocutory injunction against the defendants or whosoever claiming under them. This was on 2nd June 2006. On 26th June she obtained leave to move

for committal after the defendants and their agents continued to be on her land and, in fact, started drilling the borehole.

When she appeared before this court on motion to move for committal, the defendant were still on her land drilling the borehole.

The evidence of the plaintiff was not controverted. The defendants despite service did not appear. According to the affidavit filed by the plaintiff, she served the notice personally on the defendants. I am satisfied that the notice to move for committal was properly served. The defendants have not refrained from being on her land and have continued to drill the borehole. Refusal to comply with the court order clearly, is contempt of court. Further more, the defendants are aware of the action against them of trespass. There is also evidence that the plaintiff had, previously, refused the defendants licence to drill a borehole on her land. It is my view that the defendants are deliberately disobeying the court in order to prejudice the outcome of the case.

This amounts to interfering with the administration of justice:
Administrator General Vs Khan[(1930)16(1)MLR2.

I therefore find that these defendants are in contempt of court and I grant the prayer that they be committed to prison. I order that they be committed to prison for 18 days.

Costs to the plaintiff.

Pronounced in Open Court this 11th day of July 2008 at Blantyre.

E. B. Twea
JUDGE

