

IN THE HIGH COURT OF MALAWI
LILONGWE REGISTRY
MISC. CRIMINAL CASE NO. 10 OF 2008

BETWEEN

CHIOZA NYANDA APPLICANT

- AND -

DAMIANO SIPANALA 1ST RESPONDENT

ASHAN SIPANALA 2ND RESPONDENT

CORAM : CHOMBO, J.

: Mangulama, Counsel for the Applicant
: Bandawe, Counsel for the Respondents
: Baziliyo, Court Interpreter

RULING

The application before me is for an interlocutory injunction pending determination by court of the rightful owner of the piece of property in question. The application is made under Order 29 of the Rules of Supreme Court. The application was made as a result of a dispute over a piece of land situated at Nkonkha Trading Centre in Mchinji District.

The brief facts are that the applicant bought the said plot from a Mr. Dzonzi in August 1994 and is using the premises for commercial purposes. The respondents claim that the property belongs to them and ordered the applicant to vacate it by

31st March 2008. The matter has been deliberated on by several traditional authorities who found that the property rightfully belongs to the respondents and that he should vacate it. One traditional authority, T/A Mabvere ruled that the applicant should vacate the land but that the respondents must be compensated by the applicants. The respondents refused to compensate the applicant and the matter went before the District Commissioner for Lilongwe. The District Commissioner found for the respondents and quashed the compensation order made by the traditional authority Mabvere. The respondents now seek vacant possession of the land and the applicant wants court's determination on the ownership of the land. Meanwhile the applicant seeks an interim injunction to protect his interests whilst waiting for the court's determination.

The respondents on their part, oppose the application for an injunction, stating, among other things, that the applicant has no legal right to protect over the land and must therefore not be allowed to succeed in his application. They further claim that the applicant had been warned about the disputes on the property but, he decided to ignore the wise counsel and, with the support of one traditional authority Nkonkha, decided to proceed with the purchase of the property in question.

One of the cardinal rules in granting an injunction is that there must be a triable issue in question. The facts on file, which facts are also admitted by the applicant are that he was informed, even at the point of sale, that the property in question was a subject of disputes but he stuck to his guns, cheered on by one traditional authority Nkonkha. After he bought the land and the respondents intensified

their claim for their inheritance the said traditional authority Nkonkha refused to assist him. All the other traditional authorities, and the District Commissioner came to the same decision, that he should vacate the land and let the rightful owners in law take possession. The applicant decided to throw caution to the wind and still bought the property when he was aware of the disputes. The applicant now seeks to rely on the fact that if the respondents are indeed the rightful owners then they must have sat on their rights. With respect I do not agree with that submission. According to the record the respondents had already raised issue with the said Mr. Dzonzi about the ownership of the land before the applicant paid for the land. At least Traditional Authority Msakambewa Chingondi's affidavit indicates that at least ten years before the death of the respondents' father the complaint about ownership of the said land had already been entertained by him. After the complainant's death, his sons, now the respondents in this matter, proceeded to register their interest in the said land.

Unfortunately the respondent's father died before the matter could be resolved. Whatever the case, it is important to mention that it is on record that the applicant was aware and was fully warned about the dispute over the said piece of land. The applicant cannot therefore now claim that the law should protect him when he failed to take caution at the right time – he could have been spared all the hustles that he is now facing.

Briefly put, to allow the injunction would be allowing the misuse of the court process – the issue of ownership of the property was already determined and

there is nothing to determine again. The applicant has no legal right in the land and there is nothing that he can protect. I must therefore dismiss the application with costs.

MADE in Chambers this 25th of April, 2008.

E.J. Chombo
J U D G E