

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CRIMINAL APPEAL CASE NO. 170/2005
BEING CIVIL CASE NO. 272 OF 2008**

ANTHONY MANDALASIAPPLICANT

V

MALAWI HOUSING CORPORATION.....RESPONDENT

CORAM : **CHOMBO, J**
: Chalamanda, Counsel for the Applicant
: Kazembe, Counsel for the Respondent
: Kafotokoza, Court Interpreter

RULING

The applicant was a tenant of the respondent occupying house No 18A 368 in Area 18 in Lilongwe. The respondent gave notice for the applicant to vacate the house on the grounds that the applicant had breached a condition of tenancy. The said condition provides that a house must not be vacant

for 14 consecutive days. The respondent consequently forcibly gained access into the applicant's house, bundled up his property and dumped it at Trust Auctioneers and offered the house to another tenant. The applicant now applies for a mandatory injunction. The applicant filed affidavit and skeletal arguments in support of the application.

The respondent opposes the application and has also filed an affidavit and skeletal arguments. The respondent submits that the applicant breached the tenancy agreement by abandoning the house when he moved in with his wife in Area 25. The respondent depones that through its inspectors discovered that the house was abandoned and issued a notice for eviction. When the applicant did not remove his personal effects as per the notice of eviction the respondent moved in and removed the property and dumped it at Trust Auctioneers and for safe keeping. The house was allocated to another tenant, a mandatory injunction would therefore, among other things, jeopardize third party interests. The respondent also submits that granting a mandatory injunction at this particular stage, when there are material facts in dispute, would tantamount to determination of the matters on affidavit evidence.

I had occasion to go through all the evidence on record, and found one crucial aspect that links the eviction of the applicant and proof of desertion of the house missing. The respondent has not shown to court how it was concluded that the applicant had vacated the house for the mandated 14 days. Such proof would require, at the least, an affidavit from the inspector (s) of how this was monitored inclusive of the dates when the exercise was carried out. Without this crucial information the court would be acting on mere speculation. In the absence of such evidence therefore the court must allow the applicant's application in part.

The question I have to decide in allowing the applicant's application is whether a mandatory injunction best serves the situation mandatory injunctions, according to Order 29/1/5 of the Rules of Supreme Court, are normally granted in cases

“ ...Where this is the only way in which to avoid the proven probability of damage to the plaintiff's property ...”

and also where

“ ... the case had to be unusually strong and clear ...”

In my considered view the situation of the applicant does not meet these conditions. Firstly there is no “proven probability of damage to property” for this property was already removed by the respondent to the ware houses of Trust Auctioneers. If at all there was probability of damage to property the same may have happened already and does not apply to the present situation. Then secondly, Order 29/1/5 provides that the “case has to be unusually strong and clear”. This court, in granting the application is not in any way intimating that the applicant’s case is strong and clear, but that there are triable matters and therefore I believe that an interim order would serve the purpose. Lastly, the respondent submitted that another tenant has already taken up occupancy of the house in question. No doubt an order of the court for the applicant to return to the house would adversely affect the third party. The respondent to my knowledge, the largest housing

company, has other houses of a similar nature within Area 18.

In view of the above therefore I grant an interlocutory order of injunction as follows:

1. The respondents must provide a house for the applicant within Area 18 of a similar nature to the one he was evicted from within 21 days from the date of this order. If a house of a similar nature cannot be found then a house of similar than the one he was occupying.
2. The applicant will only be entitled to continue staying in the said house if upon determination of the matter by a competent court it is found that the respondent had no grounds for enacting the applicant as it did.
3. The applicant must within 21 days after he has been allocated the said house by the respondent file summons for the substantive matter.

I order that each party bears its own costs.

MADE in Chambers this 23rd May 2008.

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CHOMBO, J