



**JUDICIARY**

**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NUMBER 38 OF 2008**

**BETWEEN:**

**BAMUSI JULIUS.....PLAINTIFF**

**-AND -**

**BEARD JULIUS.....1<sup>ST</sup>  
DEFENDANT**

**WINESI JULIUS.....2<sup>ND</sup>  
DEFENDANT**

**JACK JULIUS.....3<sup>RD</sup>  
DEFENDANT**

**CORAM: THE HONOURABLE JUSTICE E. B. TWEA**  
Mr Makhalira, of Counsel, for the plaintiff  
Absent, of Counsel, for the defendant  
Mrs Gangata – Official Interpreter

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**RULING**

**Twea, J**

The plaintiff brought this action by writ claiming an injunction to restrain the defendants from unlawfully occupying the premises of his maize mill.

In the meantime they sought an interim injunction.

The plaintiff and the defendants are brothers. They carry on a variety of businesses.

The plaintiff deponed that the maize mill in issue was bought and planted by him. Thereafter the other brothers: the defendants, forced the first defendant or him to run the maize mill. He contended that the defendant now does not surrender the proceeds from the maize mill except when and if authorized by the other defendants. Hence he now seeks the injunction.

The defendants deponed that indeed the plaintiff is their brother. However they averred that they had all engaged in businesses ventures jointly assigning each other to particular areas. As a result they have since expanded and bought a minibus and 3 ton truck. Set up a wholesale. The brothers eventually fell apart as a result of conflict over sharing the businesses.

The plaintiff disputed the claim by the defendant that he never run any

business jointly with them or any one of them at all.

This is a peculiar case. What comes out in the dispute is that the defendants are alleging that the plaintiff is selfish and being dishonest. The affidavit in reply by the plaintiff equally accuses his brothers of being selfish, dishonest and to have committed fraud. He demand strict proof of their averments. An injunction is an equitable remedy. According to the case of *American Cyanamid V Ethicon Ltd [1975] AC 396 or [1975]2 W.L.R 316*, I must first, determine whether there is a serious issue to go for trial. The facts of the case as deponed raises more questions than answers. This Court really has no basis really on which to decide for or against the plaintiff in respect of the conflicting and competing evidence. This can only be decided by the trial court after hearing the party in chief and cross – examination. I therefore find that there is a serious issue to go for trial.

The second point is that I must consider if damages would be sufficient remedy. In my view, they would.

The plaintiff is denied proceeds from the maize mill. He has not said

anything about the cost of running the maize mill. It is obvious that the first defendant has to be paid the opportunity cost of the time he spends running the maize mill and all the administrative issues about running a business. All these are calculable in cash terms.

In any case, even if I was to consider the balance of convenience, would have from that it is in favour of the defendants. They run the maize mill and are responsible for expenses and costs associated with running the maize mill. They share the proceeds to the plaintiff, even though the plaintiff has complained that such a share only come at their discretion to authorize it. I find that he does get a share of the proceeds. The balance of convenience would therefore have been in favour of the defendants, that the status quo, must be maintained.

I therefore find that an injunction is not an appropriate remedy. I decline to grant the injunction. The application is dismissed with costs to the defendants.

***Pronounced in Chambers*** at Principal Registry this 24<sup>th</sup> day of April 2009 at Blantyre.

E. B. Tvea  
**JUDGE**