JUDICIARY

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
LAND CAUSE NUMBER 2 OF 2011

BETWEEN:

RUTH CHITSEKO NTHALA t/a DEE & TEE LODGE.....PLAINTIFF

-AND –

NBS BANK LIMITED.....1ST DEFENDANT
MAHOMED HANIF OSMAN.....2ND DEFENDANT

CORAM: THE HONOURABLE MR JUSTICE J. S. MANYUNGWA
Hon. Mr E. Banda, of Counsel, for the plaintiff
Mr Ntokale, of Counsel, for the 1st defendant
Mr Ngutwa, of Counsel, for the 2nd defendant
Mrs P. Mangisoni – Official Court Interpreter

Date of Hearing: 31st January, 2011
Date of Ruling : 10th June, 2011

RULING

Manyungwa, J

INTRODUCTION:

This is the plaintiff's inter – partes summons for the continuation of the order of an interlocutory injunction which was granted ex – parte to the plaintiff on 5th January, 2011 by my learned brother judge Chipeta J. The said order of interlocutory injunction restrained the 1st and second defendants by themselves, their servants, agents or any person howsoever acting and not withstanding the transfer of title from the 1st defendant to the

2nd defendant from entering the premises of Title Number Limbe East 638 Mpingwe, Limbe and occupying the same and restraining the defendants as aforesaid from erecting, constructing, completing or carrying out works on the said plot. The said order of interlocutory injunction was valid for 14days from the said date of 5th January, 2011 and was subject to an inter – partes summons within the said 14 days. The summons was made pursuant to Order 29 rule 1 of the Supreme Court Rules and is supported by an affidavit sworn by the plaintiff herself namely, Ruth Chitseko Nthala. The two defendants on the other hand oppose the summons and have filed their two affidavits in opposition, the first sworn by Mr Oswald on behalf of the 1st defendant while the 2nd is sworn by Mr Mahomed Hanif Osman, the 2nd defendant himself. The plaintiff was at all material times the owner of landed property Title number Limber East 638, Mpingwe Blantyre on which she operated a business in the style of Dee and Tee Lodge. The first defendant bank is a financial banking institution that loaned the sum of MK10 million to the plaintiff in the course of its business and on request of the plaintiff for extension works of the lodge. The second defendant is the purported purchaser of the plaintiff's property to whom the 1st defendant sold the same and transferred the said property to him.

We heard the inter – partes summons herein for the continuation of the interlocutory order of injunction on 31st January, 2011 and we did reserve our ruling which we now proceed to render. At the said hearing Honourable Mr Edwin Banda, of counsel appeared for the plaintiff while Mr Ntokale, of Counsel appeared for the 1st defendant and Mr Ngutwa, of counsel appeared for the 2nd defendant.

THE PLAINTIFF'S CASE

In her affidavit in support of the summons the plaintiff namely Ruth Chitseko Nthala, deposes as follows: That at all material times she was the registered owner of the Title Number Limbe East 638 situated in Mpingwe, Limbe on which she operated a business in the name and style of Dee and Tee Lodge. The deponent states that she obtained a loan of MK10 million to extend her business from the 1st defendant bank with which she also wished to extend her lodge. On 11th February, 2009 the plaintiff signed an acceptance, an offer letter from the 1st defendant bank which contained the terms and conditions of the loan. That letter is dated 10th February, 2009 and was exhibited in the plaintiff's affidavit as exhibit **"RCN1".** The deponent further states that she also signed a loan agreement with the 1st defendant in which she was required to contribute the sum of MK8 Million

towards the project, apart from the MK10 Million Fund. Under the said loan, the 1st defendant bank was entitled to security which the plaintiff furnished in the form of Title Number Limbe East 638 Mpingwe and that the loan was subject to valuation of the security, which was done and was valued at MK43,200,000.00 (Forty – Three Million Two Hundred Thousand Kwacha). The deponent further states that the premises comprised of the main building, with 5 rooms, two outdoor shelters, a kitchen, reception, garage and an incomplete two bed roomed house with a lounge etc and that the plot also comprised of very big land. The deponent depones further that she erected several works to which she applied the MK10 Million loan and her additional money exceeding MK20 Million. The deponent further stated that she did works to the property using the monies she obtained under a loan from the 1st defendant bank and other monies and workmanship. The deponent further states and in fact concedes that she defaulted in the loan repayments to the 1st defendant bank which event propelled the 1st defendant bank to purportedly exercise its the power of sale. The deponent further stated that her default in the loan repayments was due to the extensive works that she was carrying on at the premises, and that it became so onerous for her to build and repay the loan at the same time. The deponent further states that she defaulted on the loan repayments because she genuinely believed that the 1st defendant bank had money in excess of MK1million belonging to her which it was not releasing to her. The deponent further states and contends that in exercising the power of sale herein the 1st defendant bank was reckless and did not exercise due care to take into account the deponent's interest in that the 1st defendant bank never gave her notice or proper notice of its purported exercise power of sale, never carried out a valuation of the property before the sale, and further that the 1st defendant bank never set a reserve price or proper reserve price that took into account the deponent's interests, and also that the 1st defendant did not sell the property at a true value. The deponent therefore contends that she was injured by the selling of the property under value.

The deponent further contends that the 1st defendant bank sold the property at MK13,500,000.00 and that she got this communication from the 1st defendant through a letter dated 14th December, 2010, exhibited in her affidavit as exhibit **"RCN3** and contends that further that that letter did not constitute an account from the 1st defendant to her which she believes she is entitled to. The deponent further contends that she has been seriously injured in that the 1st defendant did not take into account the value of the existing structures i.e MK43,200,000.00 (Forty Three Million Two

Hundred Thousand kwacha], and additional works. As a matter of fact the deponent states that she expended a sum exceeding MK20 Million, which included the MK10 Million loan that she obtained and that she is also a contractor and did all construction works herself which meant that she used her own machinery to do all the works, and that the cost of hiring the equipment meant that the MK10 Million had been exceeded by far. The deponent states further that she estimates the value of the extension works to have cost above MK40 Million subject to valuation by appropriate persons and yet the 1st defendant bank only took into account the MK13.5 Million that she owed ignoring that the true value of the property (building plus land) exceeded MK80 Million and that the property is a commercial entity with a commercial value and good will that may well reach MK100 Million. The deponent states that the 1st defendant bank sold and caused a transfer of the property to the 2nd defendant who now intends to enter and take possession and that if the 2nd defendant takes possession of the plot he will carry out his own works to complete the building and that this in effect would disturb valuations and inspections. The deponent further contends that this application is urgent in that the 2nd defendant is a third party who is not really concerned and interested in the dispute between the plaintiff and the 2nd defendant, and he may enter the premises and seal the deal thus completely cutting off the deponent. The deponent further undertakes to pay damages if it later transpires that the injunction was erroneously granted or that it ought not have been made in the first place. The deponent therefore prays for the continuation of the ex – parte order of injunction aforesaid.

THE DEFENDANT'S CASE

As earlier on stated, the two defendants herein, swore affidavits in opposition to the continuation of the ex-parte interlocutory order of injunction. In his affidavit in opposition to the summons sworn on behalf of the 1st defendant bank, Mr Oswald Ntokale depones that the plaintiff herein applied for a loan of MK10 Million from the 1st defendant bank to help her complete construction works and pledged her property as security for the loan. The charge for the property was duly registered which empowered the 1st defendant bank to sell the property in the case of default on the part of the plaintiff. The deponent further states that before the loan was advanced the plaintiff brought a valuation report property indicating that the value of the property was MK21 Million and the 1st defendant bank refused to accept the same on the grounds that the said report was over – valued. The deponent contends that the property was not valued at MK43.2 Million as claimed by the plaintiff as is evident from exhibit **"OCM 1"**, a copy of the said

valuation report. The deponent further states that the 1st defendant bank only proceeded to grant the loan on the understanding that they would only consider 80% of the stated value for mortgage purposes, and the 1st defendant bank requested the plaintiff to insure the property and she did so with NICO General Insurance Company, the 1st defendant bank not being a party to that agreement. The deponent contends and states that the plaintiff literally paid nothing towards reducing the loan since 2008 when the loan was advanced to her, and that the plaintiff even failed to pay for legal fees for the creation and registration of the charge. It is further stated by the deponent that the plaintiff was requested to deposit MK8 Million into the mortgage account as proof that she indeed had the required MK8 Million for the construction works but she failed or neglected to make the deposit. The deponent further contends that there were no construction works on the site until the 1st defendant bank gave the plaintiff the 1st MK5 Million for the construction works. The first defendant duly inspected the works to ensure that the money had been put to good use and it is then that the 1st defendant became aware that only the money that had been advanced to her had been used. The deponent further states that after the whole MK10 Million had been disbursed to the plaintiff the plaintiff still had not finished the works and she asked for a further advance which the 1st defendant bank declined to grant because the plaintiff had failed to repay the incumbent any loan amount. The deponent states that in view of the foregoing, he believes that the plaintiff never had or used the MK8 Million as claimed in the plaintiff's affidavit in support of the summons herein. The deponent further states that the plaintiff neglected to repay the loan even though she had been given grace period for a long time and had that period extended on numerous occasions. The deponent states that as a matter of fact the 1st defendant bank gave Notice to the plaintiff of the intended sale and the plaintiff asked for its suspension to which the 1st defendant bank reluctantly accepted on the condition that she would repay the loan but the plaintiff failed to repay the loan as is evident from exhibit **"OCM 2(a)"** and **"OCM 2(b)"** which are copies of letter from the 1st defendant indicating the Notice of the sale. The deponent further states that the property was re-valued by an independent and competent official from Trust Auctioneers and Estate Agents, who, having considered the current state of the property particularly the demolished structures and the uncompleted buildings estimated that the property might be worth MK12.5 Million. This is evident from exhibit **"OCM3",** a copy of the valuation report from Trust Auctioneers and Estate Agents. The deponent states that the plaintiff's property was advertised for 6 times but it only attracted two bids, the 2nd defendant's bid of MK13.5

Million being the highest. The deponent further states that the bids submitted by prospective purchasers revealed the current market value of the property as determined by the forces of demand and supply and not the plaintiff's random figure of MK100 Million as claimed by the plaintiff. The deponent further contends that the plaintiff does not have the interest to protect in the property since the 1st defendant bank acted within the terms of the loan agreement and as empowered by the charge. The deponent further contends that the 1st defendant bank acted reasonably and exercised due regard for the interest of the plaintiff herein for in revaluating the property, advertising it for a long time and eventually selling it at a price higher than the value indicated by the valuation report.

The deponent further contends that the plaintiff has not shown that the balance of convenience lies in favour of continuing the injunction since she has not made any undertaking to pay damages in the event that the court decides that she was not entitled to the remedies she claims. The deponent further states that the continuation of the injunction herein will have an adverse effect on the rights of the 2nd defendant who is an innocent purchaser for value without any notice of the alleged claims by the plaintiff. The deponent further contends that in addition to the foregoing the plaintiff has not demonstrated that she is capable to paying the damages in excess of MK13.5 Million having failed to repay anything towards reducing a loan of MK10 Million in a period of 3 years. The deponent further states that the plaintiff seeks to restrain or indeed halt the sale when she has both the first defendant bank's money and the charged property and has neglected to repay the loan in 3 years.

Wherefore the deponent prays that the summons by the plaintiff for the continuation of the injunction should be dismissed since the injunction was obtained by suppression of material facts such as that there was no notice before the sale, nor that there was no valuation of the property before the sale and further that the said property was sold at a loss. The deponent further states that the plaintiff wrongly claimed that the property was initially valued at MK43 Million when in fact the valuation report indicated MK21 Million which the 1st defendant bank rejected as being an exaggeration. Further the deponent contended that the plaintiff has not shown the value of the property is indeed MK100 Million. The deponent therefore states that the summons be dismissed with costs.

The second defendant also swore an affidavit in opposition in addition to that of the 1st defendant. In his affidavit in opposition, Mr Mahomed Hanif Osman, the 2nd defendant herein depones that in around August, 2010 he saw an advert in the papers wherein a number of properties were being sold by tender by the 1st defendant bank through Trust Auctioneers and Estate Agents, and that among the said properties was property Title Number LE 638, which is the subject of these proceedings as is evident from exhibit **"MHO1".** The deponent states that he bid for the aforementioned property and was successful. The deponent further states that he neither knew why the 1st defendant bank was selling the property nor what proceedings it followed in doing the same, but that he bid following the bidding process and that he was eventually offered the property by the 1st defendant bank's agent, namely the said Trust Auctioneers and Estate Agents as is evident from exhibit **"MHO2".** The deponent further states that he duly paid the purchase price and consequently upon the said payment being effected the 1st defendant bank duly transferred title over the property to the deponent and that the said title was accordingly registered on or around 4th December, 2010. The deponent exhibited exhibit **"MHO3",** a copy of the Land Certificate. The deponent states that he does not know why or what the plaintiff is suing him for, if at all, the irregularities (as alleged) on the part of the 1st defendant bank with regard to the sale of the property. Further, the deponent contends that the plaintiff can surely sue the 1st defendant bank and get adequate compensation by way of damages, if at all, for such irregularities and that he is sure that if the court refuses to grant the injunction and it later transpire that the plaintiff has suffered damage.

ISSUE(S) FOR DETERMIANTION

The main issue for the determination of the court is consideration of the question whether or not the ex – parte order of interlocutory injunction should be extended or continued as was argued by the plaintiff and her legal practitioners or the same should be dismissed as was submitted by the defendants and their legal practitioners.

THE LAW

The position of the law as regards interlocutory injunctions, is in our view, settled. The usual purpose of an interlocutory is to preserve the ***status quo*** until the rights of the parties have been determined in the main action. It is well settled that the principles governing the grant or refusal of an interlocutory injunction are those that were enunciated by Lord Diplock in the landmark case on interlocutory injunctions namely ***The American***

Cynamide Company V Ethicon Limited[1]. The first principle is that the plaintiff must show that he has a good arguable claim to the right that he seeks to protect. Secondly, the court must not attempt to decide the claim on affidavits, it is enough if the plaintiff shows that there is a serious question to be tried. Thirdly, 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. And in deciding the question of balance of convenience the court shall consider whether damages will be a sufficient remedy for the mischief which is complained of and even if it considers that damages will be a sufficient remedy, it must further consider whether the defendant or wrong – doer shall be able to pay such damages. It was stated by Tambala, J as he then was in the case of ***Mangulama and Four Others V Dematt***[2] that:

> *"An application for an interlocutory injunction is not an occasion for demonstrating that the parties are clearly wrong or have no credible evidence. The usual purpose of an order of interim injunction is to preserve the* ***status quo*** *of the parties until their rights have been determined"*

Further, in the case of ***Candlex Limited V Phiri***[3] it was stated that:

> *"It is accepted that the procedure relating to the grant or refusal of an interlocutory injunction and the tests to be applied are generally those laid down by Lord Diplock in the* ***American Cynamide Company V Ethicon Limited*** *[supra]. It is important to recognise these as guidelines which are not cast in stone although variations from them are limited. Put simply, the guidelines require that initially the applicant must show that there is a serious question to be tried. If the answer is yes, then the grant or refusal of an injunction will be at the discretion of the court. In exercising its discretion the court must consider whether damages would be an adequate remedy for the party injured by the court's grant or refusal to grant an injunction. If damages are not adequate remedy or the losing party would not be able to pay them, then the court must consider where the balance of convenience lies."*

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[1] ***The American Cynamide Company V Ethicon Limited***[1975] AC 39:.[1975] AII ER, 505,HL
[2] ***Mangulama and Four Others V Dematt*** Civil Cause Number 983 of 1999 (unreported)
[3] ***Candlex Limited V Phiri*** Civil Cause No. 713 at 2000

Furthermore in ***Ian Kanyuka suing on his own behalf and on behalf of all Executive Members of the National Democratic Alliance [NDA] V Chiumia and Others***[1], Tembo, J as he then was, had this to say:

> *"Order 29 of the Rules of Supreme Court make provision for general Principles regarding the grant or refusal of an application for an interlocutory injunction. The usual purpose of an interlocutory injunction is to preserve the* ***status quo*** *until the rights of the parties have been determined in an action. The order is negative in form, thus to restrain the defendant from doing some act. The principles to be applied in applications for interlocutory injunctions have been authoritatively explained by Lord Diplock in* ***American Cynamide Company V Ethicon Limited*** *[supra]. The plaintiff must establish that he has a good arguable claim to the right he seeks to protect. The court must not attempt to decide the claim on affidavits; it is enough if the plaintiff shows that there is a serious question to be tried. If the plaintiff satisfied 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. Thus, the court ought to consider whether damages would be a sufficient remedy. If so an injunction ought not be granted. Damages may not be a sufficient remedy if the wrong – doer is unlikely to be able to pay them. Besides, damages may not be a sufficient remedy if the wrong in question is irreparable or would be difficult to assess. It will be in general material for the court to consider whether more harm would be done by granting or by refusing an injunction. In particular it will be wiser to delay a new activity rather than risk one that is established.*

See also: ***Mobil Oil Malawi Ltd V Leonard Mutsinze***[2]. Now the ***American Cynamide Case*** [supra] held that there was no rule of law that the court was precluded from considering whether, on a balance of convenience, an interlocutory injunction should be granted unless the plaintiff succeeds in establishing a ***prima facie*** case of probability that he or she would be successful at the trial of the action i.e. that there was a serious question to be tried. In the case of ***Amina Daudi t/a Amis Enterprises V Sucoma***[3] the

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[1] ***Ian Kanyuka suing on his own behalf and on behalf of all Executive Members of the National Democratic Alliance [NDA] V Chiumia and Others*** *Civil Cause Number 58 of 2003*

[2] ***Mobil Oil Malawi Ltd V Leonard Mutsinze*** Civil Cause Number 1510 of 1992

[3] ***Amina Daudi t/a Amis Enterprises V Sucoma*** Civil Cause No. 319of 2003

learned Mwaungulu, J enumerated the following principles which we equally held to be good law viz;

1. A court will not grant an injunction unless there is a matter to go for trial.
2. Once there is a matter to go for trial, the court has to consider whether damages are adequate.

The learned judge had this to say at page 4 of his judgement:

> *[F]irst, a court will not grant an injunction unless there is a matter to go for trial. This obviously filters cases not deserving the equitable relief that by its nature prevents exercise of rights before a court finally determined the matter...Secondly, once there is a matter to go for trial, the court has to consider whether damages are an adequate remedy. This consideration requires answers to two sequel questions. First, from the perspective of the defendant, even if damages are an adequate remedy, the court will refuse to grant the injunction if the plaintiff can not pay them...Secondly, from the perspective of the plaintiff, if damages are an adequate remedy and the defendant can pay them, the court will not refuse an injunction. The court may therefore allow the injunction where damages are an adequate remedy and the defendant can pay them."*

Moreover, it must be appreciated that damages will be an inadequate remedy where the plaintiff's or the defendant's losses are difficult to compute. In the case of the ***Registered Trustees of the Christian Service Committee V Mandala Building andConstruction company Limited***[1], The Supreme Court of Malawi has perhaps restate the law on injunctions

> *"In determining whether to grant an interlocutory injunction the question the court ought to consider was not whether it was mandatory or prohibitory, but whether the injustice that would be caused to the defendant if the plaintiff was granted an injunction and later failed at the trial out-weighed the injuries that would be caused to the plaintiff if the injunction was refused and he later succeeded at the trial.*

[1] ***Registered Trustees of the Christian Service Committee V Mandala Building andConstruction company Limited*** MSCA Civil Appeal No. 9 of 1999

In our most considered opinion therefore the question as to whether the plaintiff herein has established or demonstrated that she has a good arguable claim to the right that she seeks to protect should be answered in the negative. To begin with it is not disputed that the plaintiff applied for and was granted a loan of MK10 Million by the 1st defendant bank in order to help her complete construction works at her premises and she pledged her property Title Number LE 638 Mpingwe as security. Furthermore it is also not disputed that since the year 2008 when the loan facility was availed to the plaintiff, she has literally paid not a single penny to the 1st defendant bank towards the satisfaction of the said loan. This fact is admitted by the plaintiff herself when she states in paragraph 11 that she defaulted in the payments to the first defendant bank consequent upon which the first defendant bank purportedly exercised its power of sale. To make matters worse the plaintiff was even granted a grace period to make good of the claim but even then she failed to make good of the debt.

Would the remedy of an injunction be available to the plaintiff in the circumstances. The clear position of the law suggests otherwise, that that remedy is not available to a person like the plaintiff in the present case. Section 71(3) of the Registered Land Act provides as follows:

> *S71(3) "A transfer by a chargee in exercise of his power of sale shall be made in the prescribed form, and the Registrar may accept it as sufficient evidence that the power has been duly exercised, and any person suffering damage by an irregular exercise of the power of sale shall have his remedy in damages only against the person exercising the power of sale."*

In the instant case the 1st defendant bank exercised its power of sale, and sold the plaintiff's property to the 2nd defendant and it is clear that the plaintiff's remedy here lie in damages. The plaintiff alleges that there was no notice. However this assertion is not borne by the evidence as it is evident from exhibits ***"OCM 2(a)"*** and ***"OCM 2(b)"*** that the 1st defendant bank gave notice of the sale to the plaintiff. In the case of ***Indefund Ltd V M. Saonda***[1], the plaintiff was seeking an injunction to restrain the possession of the property that had been sold under a power of sale and pleaded that there was no notice. The court held that since she had been

[1] ***Indefund Ltd V M. Saonda*** Civil Cause Number 274 of 2002

aware of the status of the debt through reminders of the bank she had notice. This is what the court said at p2.

> *"The court must at all times bear in mind that financial institutions have to realise their money, or if not, the security to stay in business. There is no prudence in the courts allowing such default as would result in the borrower losing the security without the lender realizing the debt. That will only burden the borrower and increase the cost of borrowing on the capital market."*

Furthermore in ***Royal Foods and Spice Works Limited V Finance Corporation of Malawi Limited***[1], the court held that courts must be vigilant not to assist commercial debtors to avoid their lawful obligations by judicial process. This is what the court said:

> *"It would be great folly for our courts to assist commercial debtors to avoid their lawful obligation by using the judicial process. Businesses by their nature have risks and the agreements have in them clauses or provisions to minimize such risks. If one can not own up one must get out and not hold down the flow of capital. Courts are there to aid commercial entities in their lawful transactions and enhance economic growth by ensuring that every player owns up to his or her obligations to hold otherwise is to promote paupers living in heaven."*

Moreover in the case of ***Bishop Daniel Mkhumbwe V National Bank of Malawi***[2] it was held by the learned Mwaungulu, J that the power to realize security if properly exercised, can not be fettered by an injunction for it makes utter commercial injustice for an chargor to have both the chargee's money and the security beyond the contractual tenure. This is what the learned judge stated:

> *"Financial Institutions, building societies and banks rely on charges or mortgages to secure funds they lend. A law recognising the risk and cost of collection of money is important. Under banking and building society law, financial institutions hold depositors funds. They lend on a return to depositors and financial institutions. An uneven*

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[1] ***Royal Foods and Spice Works Limited V Finance Corporation of Malawi Limited*** Civil Cause Number 33520 of 1999

[2] ***Bishop Daniel Mkhumbwe V National Bank of Malawi*** civil Cause Number 2702 of 2000

handed law affects business efficacy and confidence. Financial institutions pass the risk to borrowers in high interest rates."

In the instant case the 1st defendant bank already exercised its power of sale and sold the property to the 2nd defendant after having given notice of the sale to the plaintiff. The 1st defendant bank even engaged an independent valuer to give an estimation of the current market value of the property before sale and the valuer's estimate was that the property was worthy MK12. 5 Million as is evident from exhibit ***"OCM 3"***, and yet the 1st defendant bank managed to sell the property to the 2nd defendant, who was the highest bidder at MK13.5 Million. The argument therefore by the plaintiff that the 1st defendant bank did not exercise due care or that it did not take into account the plaintiff's interest and that it sold the property under value is not made out. Actually, it is misleading. Equally the argument that the property is worthy MK100 million not made out as the valuation report of the independent valuer speaks for itself. We think the 1st defendant bank had been lenient enough with the plaintiff as demonstrated by the banks allowance to postpone the notice of the sale but the plaintiff never paid up.The plaintiff's remedy here in our most considered judgement would only lie in damages.

CONCLUSION

In these premises and in view of the foregoing, we are of the considered opinion that the sale can not be faulted, and consequently that the plaintiff has not established that she has a good arguable claim to the right that she seeks to protect. Moreover, we are of the opinion that the balance of convenience lies in not continuing the ex – parte order of injunction, as a court seldom grants an injunction where damages are an adequate remedy. On this footing therefore we are minded to discharge the order of injunction as the plaintiff, in our view, can not have both the chargee's , money and at the same time retain the security. We therefore refuse to continue the injunction that was granted to the plaintiff ex – parte.

COSTS

As regards costs these normally follow the event and as the plaintiff has been unsuccessful in these we order that costs of these proceedings be borne by the plaintiff.

Made in Chambers at Principal Registry, Blantyre this 10th day of June, 2011.

Joselph S. Manyungwa
JUDGE