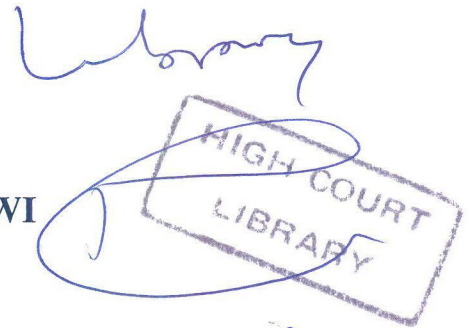




IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

LAND CAUSE NUMBER 80 OF 2011



BETWEEN:

THE REGISTERED TRUSTEES OF APOSTOLIC

FAITH MISSION OF AFRICA.....PLAINTIFF

AND

MR MIKE SHEKI.....DEFENDANT

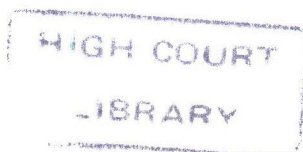
Coram: M.A. Tembo, Deputy Registrar

Ngutwa, Counsel for the Defendant

ORDER

This is this court's order on assessment of damages pursuant to the order of the High Court, dated 22nd December 2011, that the plaintiff pay damages to the defendant upon the discharge of the injunction obtained by the plaintiff herein with an undertaking to compensate the defendant in the event the injunction was discharged. The plaintiff was duly served the notice of hearing of the assessment of damages but never attended. That left the plaintiff's evidence uncontroverted.

The facts of this case are not in dispute at all. The plaintiff bought a piece of customary land in 2000 at Mwachande village in Traditional Authority Machinjiri area in Blantyre. He built a house which he has resided in since 2003. In September 2011 the plaintiff started constructing a parameter brick wall around his house and on 6th October 2011 he was served with an ex parte injunction restraining him from further construction of the brick wall. It was alleged that he was encroaching on the plaintiff's land.



On 22nd December 2011 the ex parte injunction was dissolved for want of prosecution and the Court ordered that the plaintiff pay the defendant damages for the loss suffered by the defendant as a result of the injunction herein.

The plaintiff testified that his total loss consequent upon the injunction herein is K260, 000.00. I proceeded to hear the inquiry as to damages on the understanding that I had jurisdiction. However, upon further consideration of this matter I discovered that I do not have jurisdiction. Mwaungulu Registrar, as he then was, was faced with a similar situation in the case of *David Whitehead and Sons Ltd v Gondwe* [1993] 16 (2) MLR 511 and had this to say

In the Queens Bench Division of the family division in the United Kingdom, a Master or Registrar may grant an injunction where it is by consent and the terms are agreed between the parties (Order 32); ancillary or incidental to a charging order (Order 50, rule 9); or to the appointment of a receiver by way of equitable execution (Order 51, rule 2); or in the family division to proceedings under the Married Women's Property Act 1882. But not in any other case. An order into an enquiry into damages following an injunction can only be made to a judge who ordered the injunction. In *Smith v Day* [1882] 21 Ch D, Lord Justice Brett said at 427:


"Again I am strongly of opinion that the question where an enquiry as to damages should be granted is with the discretion of the Judge who originally tries the case, and that his discretion ought not likely to be interfered with".

The order of injunction and the order dissolving the injunction were made by the Judge in situations where the Master or Registrar has no jurisdiction. The application should, therefore, go to the Judge who granted the order.

This is a matter which, in my opinion, should properly be decided by a judge. Under Order 32, rule 12, therefore, I refer the application for an enquiry into damages to be made to a judge in chambers.

In view of the following, I likewise refer this application to a Judge in chambers to do the inquiry as to damages herein. The defendant should take out the necessary notice.

Made in chambers at Blantyre this 19th December 2012.


M.A. Tembo
Deputy Registrar