



IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO.48 OF 2015

**BETWEEN**

**NOEL FOLE.....PLAINTIFF**

**-AND-**

**MALAWI HOUSING CORPORATION.....DEFENDANT**

**Coram: Hon. Justice M L Kamwambe**

Kalanda of counsel for the Plaintiff

Matumbi of counsel for the Defendant

Phiri....Official Interpreter

---

**ORDER**

***Kamwambe J***

Before me is an application by the Plaintiff for an order for the continuation of the interim injunction order preventing the Defendant from forfeiting the lease that was granted to the Plaintiff.

On or about the 22<sup>nd</sup> August 2007 the Defendant offered Plaintiff a piece of land known as Plot No. LK 782/9 at Namiwawa in Blantyre on condition that he should develop the land within twelve months from 2<sup>nd</sup> July, 2008. On 8<sup>th</sup> May, 2008 the offer was cancelled for failure to pay the purchase price. Upon negotiations, Plaintiff was allowed to pay for the plot which resulted in the lease dated 2<sup>nd</sup> July, 2009 being issued to the Plaintiff. He paid for the plot on



18<sup>th</sup> June, 2008. The lease stated that the development period is from 2<sup>nd</sup> July, 2008 to 1<sup>st</sup> July, 2009. Plaintiff did not query this.

On 29<sup>th</sup> June, 2015 the Defendant gave Plaintiff 30 days' notice to commence development of the plot or risk re-possession. Plaintiff erected a temporary caretaker's house and a brick fence as shown on the picture and also erected a kiln for bricks. On 28<sup>th</sup> August, 2015 the plot was finally withdrawn from the Plaintiff for non-development. Internal office remarks dated 17<sup>th</sup> August, 2015 on Defendant's exhibit PC 2 are as follows:

**DACS**

*There is no development on site. Villagers from Mbwerera village are illegally moulding bricks. Your direction is sought.*

*EO(2)*

*Signed*

*17/08/15"*

The above site visit remarks must have led to the withdrawal of the plot when Plaintiff is of the view that there was and is development that was done in 30 days.

Plaintiff alleges that he submitted his plans to Defendant well in 2009 for their approval before taking them to Blantyre City Council for final approval and that he made several trips to Defendant's offices seeking such approval. The Defendant argues that they do not carry out approvals stated by Plaintiff but merely satisfies itself that the building is within bounds and stamps the building plans which are taken by the owner to Blantyre City Council on the same day. They say they have no storage place or registry for plans requiring vetting. They also say that Plaintiff failed to comply with the development notice.

Plaintiff maintains that he could not build because there was no approval of his building plans. Defendant submits that there is no evidence that he submitted such plans with them and that no one in the office says he was approached by Plaintiff in respect of the plans. Of course I am baffled that Plaintiff started development after receiving the 30 day notice despite not receiving the building plans approval. He should have queried the authority. However the issue is whether indeed there was no development to warrant the forfeiture.

On the said 28<sup>th</sup> August, 2015 when withdrawal was effected, the plot was allocated to another person. The letter of withdrawal was handed to the Plaintiff on 1st September, 2015 when Plaintiff ventured to visit the Defendant's offices to inform them about the developments he had made. He was baffled to receive the letter in that manner. Plaintiff wonders how the property could be offered to another person before the registration of the land in issue was cancelled in the Land Register in accordance with section 57 of the Registered Land Act. The above are the facts in this case.

The purpose of an interlocutory injunction is to preserve the status quo until the rights of the parties are determined. See practice Note 29/1/2, RSC. In the case of **Mangulama and four others v Demmat** Civil Cause No. 983 of 1999 *Tambala J* as he was then stated like this:

*"Applications for an interlocutory injunction are 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."*

An application for an order for an interlocutory injunction is determined on affidavit evidence because it is enough that the applicant has shown that there is a triable issue and that damages would not be adequate compensation. If damages turn out to be

adequate compensation the court is better not to grant the request. At times even if damages may be adequate or not the court is called to consider the principle of the *least injustice or inconvenience*. The court will lean in favour of the least injustice outcome between granting and refusing to grant the injunction (**American Cyanamid Company v Ethicon Limited [1975] A C 396**). In considering this the court is actually looking at which outcome would bring more harm. The court must weigh one need against another and determine where the *balance of convenience* lies. However, where the balance of convenience is evenly placed then it is prudent to preserve the status quo.

Damages would not be sufficient if the wrong is irreparable, outside the scope of pecuniary compensation or if damages would be very difficult to assess.

Below I bring out some of the factors in **American Cyanamid Co.** (supra) as supported by **Fellows and Sons v Fisher [1976] 1 Q.B. 122 at 137, CA**, where Browne LJ set out Lord Diplock's guidelines which are advisable to follow:

- 1) *" The grant of the interlocutory injunction is a remedy that is both temporary and discretionary.*
- 2) *The evidence available to the court at the hearing of the application for an interlocutory injunction is incomplete. It is given on affidavit and has not been tested by oral cross-examination.*
- 3) *It is no part of the court's function at this stage to the litigations to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to try difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at trial.*

- 4) *It was to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved that the practice arose of granting him relief by way of interlocutory injunction.*
- 5) *But (at least since the middle of the nineteenth century) this has been made subject to the plaintiff's undertaking to pay damages for any loss sustained by reason of the injunction if it should be held at the trial that the plaintiff had not been entitled to restrain the defendant from doing what he was threatening to do.*
- 6) *The object of the interlocutory injunction is to protect the plaintiff against injury of his right for which he could not be adequately compensated in damages recoverable in action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need of such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in defendant's favour at the trial.*
- 7) *The court must weigh one need against another and determine where, "the balance of convenience" lies.*
- 8) *.....*
- 9) *The court must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried.*

10) *Unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory injunction relief that is sought."*

The question arising from the facts above is whether or not there was development on the plot and whether the manner of forfeiting the plot and allocating it to another person was procedurally and legally proper. This makes me find that there is a triable issue. There is a lot of uncertainty created on the issue that it would be safer to grant the injunction to protect the rights of the Plaintiff. However we are enjoined to weigh the rights of the Plaintiff that are threatened and the rights of the Defendant that may be adversely affected if the interlocutory injunction were granted.

In **Mulli Brothers Ltd v The Appellant Ltd**, MSCA Civil Appeal No. 48 of 2014 the Supreme Court at page 11 said:

*"Once there is a triable issue, the court should consider whether damages are an adequate compensation for losses the respondent may, on the appellant's undertaking to pay damages, suffer because of an interim injunction. Damages are inadequate compensation if neither can pay them. **Courts almost invariably order interim injunctions reality or land because no piece of land or reality is like another. It is unnecessary, therefore, to consider the parties' capacity to pay**, the matter must revolve on balance of justice. When considering balance of convenience or justice, courts consider what between allowing or refusing*

*interim relief results in better or greater justice or convenience or better or greater ameliorates injustice or inconvenience whatever the outcome (my emphasis)."*

The one problem I find with the affidavit of Defendant is that they do not spell out clearly that they are able to compensate the Plaintiff adequately in the event that they lost at trial. The Defendant should be able to assure the court that in the event that the outcome of the case is not in their favour they would find an alternative plot of equal value in compensation. The court would order this to happen. I am sure that the Defendant would find an alternative plot of equal value even more to compensate the Plaintiff despite that no piece of land is the same as another. Since the new purchaser has not spent any money on developing the land, there would not be much to compensate her apart from paying for development charges, in any case, Plaintiff too has his money held by the Defendant which he paid for the plot. After all, the new purchaser could herself be allocated another equivalent plot in value since, unlike the **Mulli case**, the Defendant herein is in the business of leasing out plots. Plaintiff is still holding the legal title and this factor should be considered in his favour.

In view of what I have discussed above, I find that it is not proper to vacate the injunction as apparently the balance of convenience tilts in favour of the Plaintiff. This approach will accord the least injustice. It is so decided.

**Made in Chambers this 20<sup>th</sup> day of July, 2016 at Chichiri, Blantyre.**

  
M L KAMWAMBE  
**JUDGE**