



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

LAND CAUSE NO. 3 OF 2015

BETWEEN

SHUPO CHIBWANA 1ST PLAINTIFF
ANDREW CHIBWANA 2ND PLAINTIFF
NENANI CHIBWANA 3RD PLAINTIFF
MUMDERANJI CHIBWANA 4TH PLAINTIFF
NEVA CHIBWANA 5TH PLAINTIFF

AND

REPRESENTATIVES OF THE ESTATE

OF LAWRENCE CHIBWANA (DECEASED) 1ST DEFENDANT
PATRICIA CHIBWANA GUTA 2ND DEFENDANT

CORAM: HON. JUSTICE R. MBVUNDULA

Mwala, Counsel for the Plaintiffs
Ndau, Counsel for the Defendants
Mithi, Official Interpreter

RULING

An order of interlocutory injunction was issued by this court, *ex parte*, restraining the plaintiffs through themselves, their servants or agents or otherwise from



trespassing, evicting, or attempting to evict the 2nd defendant or in any way interfering with the 2nd defendant's and her children's quiet and peaceful enjoyment of property known as Title Number Michiru 65/20 situated at Chirimba in the city of Blantyre until the final determination of this matter or until a further order of the court. The matter subsequently came up for an *inter parte* hearing and this is the order therefrom.

The house subject of the trial is registered in the name of the deceased. The Plaintiffs allege that the deceased fraudulently obtained title and on that ground the 2nd defendant and her children are not the only beneficiaries of the property. In the main action they seek orders of cancellation of the deceased's title to the property and possession of the property.

The affidavits of the plaintiffs allege that the deceased did not solely own the property as it was their parents who started construction of the house on the land and he completed it using funds from a business left by the said parents. On her part the 2nd defendant asserts that the house was constructed using resources of herself and her late husband. The detailed factual assertions on either side are, however, more complex than this. It suffices, however, to state that the facts disclosed by the affidavits at this interlocutory stage leaves the court in no doubt that there are serious questions to be tried in the main action.

The court is informed that one of the plaintiffs is unemployed, two of them do not reside in Malawi, whilst the other one is a minor. In this regard it is argued that the likelihood of the plaintiffs paying damages, should the matter be finally determined against them, is low. It has also been argued for the defendants that the 2nd defendant lives with her children and a step child who have always known the property as their home and evicting them will result in hardship on their part. But there is a counter argument to this, namely that since the granting of the injunction, the 2nd defendant has vacated the house, to which she explains that she has done so in order to let it out whilst she occupies a smaller house and apply the difference in income for the upkeep of herself and the children.

It is not clear from the affidavits who would take responsible charge of the property if the 2nd defendant is required, in the interim, to yield possession and control of the

house, in view of the respective statuses of the plaintiff earlier alluded to. It seems to this court, in the premises, that the balance of convenience lies in maintaining the order of injunction, and allow the 2nd defendant to retain control of the house until the determination of the action, and it is so ordered.

Costs in the cause.

Made in chambers at Blantyre this 27th day of July 2016.


R. Mbvundula
JUDGE