



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 130 OF 2016

BETWEEN:

WOLFRAM CUEPERS PLAINTIFF

AND

ALEX ARMBRUSTER (On his own and on behalf

Of the other subscriber of One Dollar Glasses)..... 1ST DEFENDANT

SEBASTIAN GOLCZYK 2ND DEFENDANT

MARCO LUDWIG 3RD DEFENDANT

DENIZ ISPALAR 4TH DEFENDANT

CORAM: THE HON. JUSTICE MR S.A. KALEMBERA

Msuku, of Counsel for the Plaintiff

Kaduya, of Counsel for the Defendants

Chimang'anga, Official Interpreter

RULING

Kalembera J

INTRODUCTION



This is the Defendants' application to discharge the Order of Injunction granted herein on the following grounds:

1. That the order of injunction was obtained on the basis of misrepresentation of facts and/or a suppression of material facts; and/or
2. That the order of injunction was granted notwithstanding that the Plaintiffs have no arguable claim herein; and/or
3. That the order of injunction was obtained notwithstanding that the balance of convenience dictates otherwise.

The application is supported by affidavits sworn by the 1st and 3rd defendants plus skeletal arguments. There is also an affidavit in opposition sworn by the plaintiff plus skeletal arguments.

DEFENDANTS' CASE

The defendants' case as deposed by the 1st and 3rd Defendants is that Plaintiff was employed by One Dollar Glasses Germany as Country Coordinator for Malawi in June 2015. As Country Coordinator he headed the Malawi Company One Dollar Glasses Ltd., but was never at any point employed in Malawi and that his heading the Malawi Company was basically based on his employment in Germany as Country Coordinator. That several complaints were received about the Plaintiff's conduct vis-a-vis the local staff and on several occasions he was engaged on the phone about that. Having seen that the Plaintiff was not changing his behavior, a decision was made in Germany to dismiss him as Country Coordinator for Malawi and he was fully informed on the phone. When the 3rd Defendant arrived in Malawi he handed the Plaintiff the dismissal letter and by virtue of his dismissal in Germany his Malawi position fell away and as such he has to return to Germany.

Thus, the Defendants contend that the injunction obtained herein be discharged on the grounds referred to herein. I will deal with the grounds later in this ruling if need be.

PLAINTIFF'S CASE

The Plaintiff's case as deposed by the Plaintiff himself is that it is not correct that when he came to Malawi in 2014 he came just by way of joining the other members of the team. Rather, that he specifically came to Malawi as a lead person due to his vast experience as a Manager and having travelled widely, and that's the reason he was also made to head the Malawi company from January 2015. He conceded that indeed he joined One Dollar Glasses Germany after it had already been established, and the idea of establishing One Dollar Glasses Malawi was hatched whilst he was part of the team and it was felt that his vast experience in working in various countries would help in setting up the country in Malawi. It was further his emphasis that the issues he complained about in this court are about his position as Managing Director. And that being the architect of the company it was unfair for the Defendants to remove him just like that.

Hence the Plaintiff prayed for and obtained an ex-parte injunction order herein, restraining the Defendants by themselves, their agents or servants howsoever from removing him as Managing Director of One Dollar Glasses and from interfering with his work as such Managing Director until determination of the matter herein or until further order of the court.

ISSUES FOR DETERMINATION

The main issues for determination are:

- a. Whether the injunction order herein be discharged or not.
- b. Whether this court is the proper forum to determine this matter.

LAW AND ANALYSIS

As I have observed herein the Plaintiff obtained the ex-parte injunction herein to restrain the Defendants from removing him as Managing Director of One Dollar Glasses Malawi. Regardless of how the Plaintiff has couched prayers sought in the Originating Summons, it is clear that this matter hinges on employer/employee relationship between the Plaintiff and the Defendants **vis-a-vis** One Dollar Glasses Germany and One Dollar Glasses Malawi. In other words this is a labour/employment related matter. In the case of **Andrew Thawe v Blantyre Water Board Civil Cause No. 379 of 2015 (unreported)** this court was very clear

that labour/employment matters must first be dealt with in the Industrial Relations Court, as a court of first instance before being brought to the High Court. Similarly in **Mulli Brothers Limited v First Merchant Bank Civil Cause No. 37 of 2015 (unreported)** this court was of the view that commercially related matters must be dealt with in the High Court (Commercial) Division as opposed to this Court. Reasoning being that courts established to handle specific or special matters must be respected and left to handle those matters.

In the matter at hand, this court is of the view that the gist of this matter is labour/employment related. Section 110(2) of the Constitution provides as follows:

"s.110(2) -There shall be an Industrial Relations Court, subordinate to the High Court, which shall have original jurisdiction over labour disputes and such other issues relating to employment and shall have such composition and procedure as may be specified in an Act of Parliament. "

And section 64 of the Labour Relations Act provides as follows:

"s.64 -The Industrial Relations Court shall have original jurisdiction to hear and determine all labour disputes and disputes assigned to it under this Act or any other written law."

Thus, it is very clear that the Industrial Relations Court, is the first point of call for all labour and employment related matters. Yes the High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law (section 108(1) of the Constitution), including this matter. However where special courts have been established to handle particular matters, that must be respected. Hence commercial matters must be heard in the High Court (Commercial) Division though this court has unlimited original jurisdiction. So too, labour related matters ought to be heard in the Industrial Relations Court, unless otherwise stated or directed by the High Court. In the case of **Chilemba v Malawi Housing Corporation [2008] MLLR 137** Potani J had this to say at p. 141:

"Whilst this Court indeed has unlimited original jurisdiction in both criminal and civil matters, the Industrial Relations Court was specifically created to deal with labour related matters, and it would therefore sense that labour related matters

should first be dealt with by that court before they are pushed to this Court. In the scenario of this arrangement, the High Court despite having original unlimited jurisdiction would only come in as an appellate court and not a court of first instance. This is what the framers of the Constitution intended, for they could not provide for a separate and specific court in the name of the Industrial Relations Court having original jurisdiction over labour disputes and such other issues relating to employment whilst the High Court was still there. Clearly the Industrial Relations Court was intended to be the first port of call."

And the learned judge went on to apply with approval the case of **Armstrong Kamphoni v Malawi Telecommunications Ltd, Civil Cause No. 684 of 2001 (unreported) HC** where Kapanda J (as he then was) quoted with approval Unyolo J (as he then was) in the case of *Beatrice Mungomo v Brian Mungomo and others, Matrimonial Cause No. 6 of 1996 (unreported)* where he had this to say:

"Next, learned Senior Counsel contended that this court is competent to hear the petition on the basis of section 108 of the new Constitution of the Republic of Malawi which provides that the High Court shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law. The section is very clear and I would agree with learned counsel that with such extensive jurisdiction and powers conferred upon it by the Constitution, which is the supreme law of the land, the High Court is competent to hear divorce petitions even in cases involving customary marriage as in the present case. It is to be observed, however, that although this is the position, the High Court has to look at the matter from a practical point of view. In my judgment, it would be both inappropriate and wrong for the High Court to proceed to assume jurisdiction over proceedings which fall within the jurisdiction of a subordinate court simply because the High Court has, as we have just seen, unlimited original jurisdiction. Such an approach would create confusion, as parties would be left to their whims to bring proceedings willy-nilly in the High Court or in a subordinate court as they pleasedIn short the High Court should recognize the subordinate courts and decline jurisdiction in matters over which the subordinate courts have jurisdiction . "

I have not found anything in this matter that would compel me to deviate from that position. Labour/employment related matters must be dealt with in the Industrial Relations Court. So too this matter.

CONCLUSION

Having concluded that this is an employment or labour related matter, there are no reasons compelling me to dispense with the Industrial Relations Court and entertain this matter. The Industrial Relations Court was specifically established to handle such matters, and that must be respected otherwise we will be encouraging disorder. I therefore order and direct that this matter be transferred to the Industrial Relations Court. Consequently the injunction order herein is discharged.

Each party to bear its own costs.

PRONOUNCED this 20th day of July 2016, at the Principal Registry, Blantyre.

S.A. Kalembera
JUDGE