



**MALAWI JUDICIARY**



**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO. 247 OF 2016**

**BETWEEN:**

**EVERSON NKANDA AKA GVH NAMPINGA.....1<sup>ST</sup> PLAINTIFF  
HENRY MKWANDA.....2<sup>ND</sup> PLAINTIFF  
AND**

**T/A KADUYA.....1<sup>ST</sup> DEFENDANT  
FYSON NKHATA.....2<sup>ND</sup> DEFENDANT**

**CORAM: THE HON JUSTICE H.S.B. POTANI**

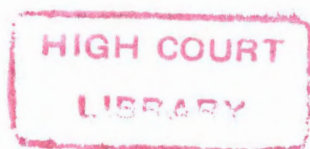
**Mr. Banda, Counsel for the Plaintiffs**

**Mr. Salimu, Counsel for the Defendants**

**Mr. Kanchiputu and Mathanda, Court Clerks**

**RULING**

This is a case at the centre of which is a dispute over the throne of Group Village Headman (GVH) Nampinga which falls under the jurisdiction of Traditional Authority (TA) Kaduya in Phalombe district. By an originating summons, the



plaintiffs commenced this action seeking various declarations and orders relating to the manner in which the 1<sup>st</sup> defendant arrived at a decision removing the 1<sup>st</sup> plaintiff from the throne of GVH Nampinga and replacing him with the 2<sup>nd</sup> defendant. At the commencement of the action, the plaintiffs obtain an *ex parte* order of injunction restraining the 1<sup>st</sup> defendant from recognizing or installing the 2<sup>nd</sup> defendant as GVH Nampinga and further restraining the 2<sup>nd</sup> defendant from performing the functions of GVH Nampinga until the determination of the matter of further order of the court. Upon being served with the *ex parte* order of injunction, the defendants made an *ex parte* application for the vacation or variation thereof but the court ordered an *inter partes* hearing and what follows is a determination thereon.

The grant or refusal of an injunction is a matter in the discretion of the court. The discretion has to be exercised on sound basis and to that end, there are principles and guidelines courts apply in considering whether to grant or refuse an application for interlocutory injunction as authoritatively enunciated in **American Cyanamid Co. v. Ethicon Ltd** [1975] A.C. 396; [1975] 2 W.L.R. 316. Broadly put, when an application is made for an interlocutory injunction the initial question that calls for consideration is whether the applicant has a good arguable claim to the right he seeks to protect with the aid of the injunction. If the answer to that question is in the affirmative, then court must move on to consider whether damages would be an adequate remedy to a party injured by the court's grant or refusal of an injunction and if not where does the balance of convenience lie. The first consideration is a threshold requirement which means if the answer is in the negative, the application would collapse there and then as it would lack foundation. And having said that, it must be stated at this juncture that it is no part of the court's function at this stage of the matter to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law

which call for detailed argument and mature considerations. These are matters to be dealt with at the trial. This is because the evidence available to the court at the hearing of the application for an interlocutory injunction is incomplete as is given on affidavit and has not been tested by oral cross-examination.


In the instant case, the court granted the *ex parte* injunction order after being satisfied that the plaintiffs had established an a good and arguable claim in that the 1<sup>st</sup> plaintiff who has been discharging the duties and functions of GVH Nampinga had been stopped from doing so by the 1<sup>st</sup> defendant and that plans were under way to install the 2<sup>nd</sup> defendant to take over and further it being the court's estimation that the damage the plaintiffs would suffer if the injunction were to be refused would not be capable of being compensated for with damages.

In the main, the basis on which the defendants seek the injunction to be vacated or varied is that there was alleged suppression of material facts by the plaintiffs in obtaining the same. In this regard, it has been deposed by counsel that the assertion by the 1<sup>st</sup> plaintiff that the applicable Lomwe and Nyanja customs were not followed and that he was not heard before his purported removal from the throne is not correct in the light of exhibit AB1a in which paramount chief Mkhumba laid down the charges against the 1<sup>st</sup> plaintiff for his removal. In essence, the defendants contend that all necessary process and procedures were followed in dethroning the 1<sup>st</sup> plaintiff and that if the court was made aware of this fact, the *ex parte* injunction order could not have been granted.

This is not an occasion for the court to decide on the merits of the plaintiffs' case. That said, the court would wish to state that when it was considering the plaintiffs' *ex parte* application for the injunction and upon being satisfied that the plaintiffs had a good and arguable claim to the throne as it was the 1<sup>st</sup> plaintiff who has been

exercising the functions and duties thereof, the court was alive of the position of the law that the purpose of an injunction is to preserve the *status quo*. In that regard, the court was persuaded to grant the injunction particularly after noting that the purported removal of the 1<sup>st</sup> plaintiff from the throne was done when the dispute over the throne was yet to be resolved by a special committee of chiefs instituted by the responsible government ministry, the Ministry of Local Government and Rural Development and such being the case, the *status quo* to be preserved would be to allow the 1<sup>st</sup> plaintiff to continue to serve on the throne until a resolution of the dispute by the special committee or determination of the matter by the court. Therefore, the court sees no basis on which the injunction order should be vacated or varied. It shall remain in force until the resolution of the dispute by the special committee or determination of the matter by the court. Accordingly, the defendants' application is dismissed with costs to the plaintiffs.

**Made in Chambers this day of April 19, 2017, at Blantyre in the Republic of Malawi.**



**H.S.B. POTANI**  
**JUDGE**