



IN THE HIGH COURT OF MALAWI
MZUZU REGISTRY: CIVIL DIVISION/
MISCELLANEOUS CIVIL CAUSE NO. 72 of 2016

Between

Clifford Mithi Applicant

-and-

Gerald Chikhasu 1st Respondent

Lenneck Chikhasu 2nd Respondent

Dalitso Chikhasu 3rd Respondent

Thom Chawala 4th Respondent

Isaac Chikhasu 5th Respondent

Jossam Chikhasu 6th Respondent

Elias Chikhasu 7th Respondent

Joel Chikhasu 8th Respondent

Lucy Chikhasu 9th Respondent

Vutani Chirwa 10th Respondent

Kennedy Nyama 11th Respondent

Yamikani Saidi 12th Respondent

RULING ON COMMITTAL

Brief Background

By way of originating summons the applicant commenced these proceedings claiming that a 7 hectare parcel of customary land situated at Banga in the area of Senior Chief Kanyenda in Nkhotakota District belongs to him and his family, and that the respondents were trespassing on the same. Before the originating summons were heard, the applicant applied *inter partes* for an interlocutory injunction pursuant to O29 r 1 of the RSC. Following and *inter partes* hearing, the

interlocutory injunction was granted on 5th August 2016, restraining the respondents and their agents from harvesting sugarcane, encroaching or trespassing on the said land. The injunction was valid for a period of 21 days from the date the order was made. The applicant was also ordered to apply for *inter partes* summons to extend the validity of the order within 7 days.

The applicant then applied for an *ex parte* summons for leave to apply for an order of committal under O52 r 2 of the RSC on 12th August 2016, which leave was granted on 8th September 2016. The motion for committal was partly heard on 17th November 2016 and the applicant was requested to provide better particulars of the offending actions of the respondents, bearing in mind that the interlocutory injunction was for 21 days only. This is now the continued hearing following the filing of supplementary affidavits with the specific details.

The hearing

The applicant swore a supplementary affidavit in support and also filed skeleton arguments in support of the committal order. In his affidavit, the applicant states that the 1st, 2nd, 3rd, 4th and 11th respondents trespassed and harvested sugarcane contrary to the injunctive order for a period of 10 days from the 7th of August 2016. This assertion is supported by the affidavit sworn in support by Tamara Mithi. Both these affidavits were served on the legal counsel for the respondents who acknowledged service.

The respondents did not file any affidavits in opposition of the committal proceeding but at the hearing adopted the affidavit in opposition to the originating summons and the skeleton arguments in opposition of the originating summons. The respondent counsel prayed that the committal proceedings be dismissed as they lacked clarity and specific information bearing in mind that a committal order leads to persons losing their liberty. He further stated that there was no valid injunction as the order of injunction had expired after 21 days. Counsel for the respondent stated that they were ready to have the originating summons heard but the applicants were not making any efforts to prosecute the matter.

In response Counsel for the applicant stated that all documents for the main matter were filed in court but no date had been granted for a hearing by the court.

He also stated that the committal was related to the actions of the specified respondents that occurred while the injunction was in force.

Discussion

When a court order is disobeyed, the court has powers to punish the person or persons who have acted in contempt of the said court order. This is essential because court orders have to be obeyed in full, unless and until they are varied by the court or overturned by a superior court. The law requires that the facts which are being relied on to prove contempt of court must be proved by the applicant on the highest standard of proof, which is proof beyond reasonable doubt. There also must be a demonstration of *mens rea* by the persons acting in contempt of court.

I am satisfied that the applicant has clearly provided proof beyond reasonable doubt regarding the nature of the disobedience. The 1st, 2nd, 3rd, 4th and 11th respondents intended to disobey the court order which was issued on 5th August 2016. They intended to harvest the sugarcane and sell the same as soon as they had the opportunity and they did so for a period of 10 days from the 7th day of August 2016, barely 2 days after the order of injunction was granted. The respondents were aware that there was an injunction which was in effect for 21 days. The particular respondents are named as Gerald Chikhasu, Lenneck Chikhasu, Dalitso Chikhasu, Thom Chawala and Kennedy Nyama. I find that the respondents' actions have been proved beyond reasonable doubt to be in contempt of a court order.

Having found them guilty of contempt of court, I am aware that the Court has powers to imprison, impose a fine or take security for good behaviour. In exercising my discretion, I will not commit the respondents to prison bearing in mind that the originating summons has to be heard and determined. I will therefore impose a fine which ought to be paid immediately. Failure to pay the fine will lead to serving a prison sentence.

ORDER

It is ordered as follows

1. That the respondents who went and cut sugarcane on 7th August 2016, thereby acting contrary to an order of injunction granted by this court on 5th August 2016 be fined the sum of MK150,000 each, which fine has to be paid within 7 days of this order. These are 1st Respondent Gerald Chikhasu, 2nd Respondent Lenneck Chikhasu, 3rd Respondent Dalitso Chikhasu, 4th Respondent Thom Chiwala and 11th Respondent Kennedy Nyama. Failure to pay the fine will result in imprisonment for a period of 3 months for each one of the respondents.
2. That the sugarcane that was harvested be assessed before the Registrar within 7 days and the value of the harvested sugarcane be paid into court.
3. That the originating summons is set for hearing on 5th April 2017 at 2:00pm

Made in Chambers at Mzuzu Registry this 31st day of March 2017



D. A. DEGABRIELE

JUDGE