



IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

MISCELLANEOUS CIVIL APPLICATION NUMBER 77 OF 2017

BETWEEN:

CHIFUNDO PHAKAMISA-----APPLICANT

AND

MAYESO KACHOLA-----RESPONDENT

CORAM: HON. JUSTICE M.C.C. MKANDAWIRE

Kita/Katundu, Counsel for the Applicant

Khonyongwa, Counsel for the Respondent

Itai, Court Interpreter

JUDGMENT

On 22nd May 2017, the applicant obtained an injunction against the respondent. The respondent by himself and through the Kawale Police Officer In-Charge or his servants or agents were ordered to release motor vehicle Scania No ZA 2915 to the applicant for his use until the final determination of this matter. The respondent filed an inter-parte application to have the injunction discharged on the basis that the same was obtained in bad faith and suppression of material facts.

I have looked at the affidavit in support of the application which was filed on 22nd May 2017. To that affidavit, there is attached a motor vehicle Registration Certificate in the name of Chifundo Phakamisa the applicant. The date of registration is 26th April 2017. In his affidavit in support of the application for an injunction, the applicant from paragraphs 4 to 7 narrated the steps that they had taken with Mr John Chigwadala to clear the said vehicle at the Malawi Revenue Authority (MRA), at Interpol Police at Area 30 at the National Police Headquarters and eventually at the Road Traffic Department. Although it is clear from the

affidavit deposed by the respondent that all the documents that Mr Chigwadala was using were in the names of the respondent which should have raised eyebrows in the mind of the applicant, the applicant did not disclose this very important information when he applied for the injunction. Certainly the applicant should have been put on his toes when he saw that all the documents were in the names of the respondent yet the one selling was Jonh Chigwadala. It is also clear that the injunction the applicant obtained apart from it being addressed to the respondent, was also affecting the police who were not put as parties to the initial application. This deprived the police to put in a bigger picture of this matter since the sale transaction had now taken a criminal perspective.

It is therefore my considered view that this injunction merits a discharge as it was obtained through suppression of very pertinent information by the applicant. I award costs to the respondent.

DELIVERED THIS DAY OF OCTOBER 2017 AT LILONGWE

M.C.C. MKANDAWIRE

JUDGE