



REPUBLIC OF MALAWI
MALAWI JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRAR
CIVIL DIVISION
CIVIL CAUSE NO. 378 OF 2017
(Before Justice J.M. Chirwa)

BETWEEN

PASTOR SAMUEL CROWMWELL VIKHUMBO.....CLAIMANT

-and-

REV. PEET J. ERASMUS.....DEFENDANT

Coram: Honourable Mr. Justice J. M. Chirwa

Mr Kazembe Counsel for the Plaintiff

Mr Mumba Counsel for the Defendant

Mr. O. Chitatu Official Court Interpreter

RULING

This is an application for an order of interlocutory injunction by **PASTOR SAMUEL CROMWELL VIKHUMBO** (“the Claimant”) restraining **REVEREND PEET J. ERASMUS** (“the Defendant”) from taking over Sola Scriptura Bible College in Nkhata- Bay.

Background:

By a Specially Endorsed Summons filed on the 30th day of November, 2017 the Claimant seeks the following reliefs:

- (1) An injunction restraining the Defendant from taking over the Solar Scriptura Bible College until conclusion of this case,
- (2) A Declaration that the Defendant has breached the agreement herein;
- (3) A Declaration that the Claimant and other trustees are the lawful owners of the college; and
- (4) Costs of the action.

On the date, aforesaid, the Claimant also filed an *ex parte* application for an interlocutory injunction. After perusing the said application an Order of interlocutory injunction valid for 21 days granted by this Court. The Claimant was ordered to take out an *inter-parties* application during the said period to extend the validity of the said order. The said order was granted subject the usual undertaking as to damages which may be occasioned by the Defendant in the event that it is found that the said order ought not to have been granted.

Following the filing of an *inter-parties* application pursuant to this Court’s Order, the Defendant also filed a sworn Statement in Opposition by **Wesly Chalo Kawelo Mwafulirwa**, hence these proceedings.

The Law :

The Court has jurisdiction under Order 10 Rule 27 of the Courts (High Court) (Civil Procedure) Rules (‘the said Rules’) to grant orders of interlocutory injunction. Rule 27 provides as follows;

“The Court may on application, grant an injunction by an interlocutory order when it appears to the court-

- (a) there is a serious question to be tried;*
- (b) damages may not be an adequate remedy; and*

*(c) it shall be just to do so,
and the order may be made unconditionally or on such terms as the court
considers just”.*

The principles governing the grant of an order of interlocutory injunction under Order 10 Rule 27 of the said Rules are somehow different from those under Order 29 of the Rules of the Supreme Court which as per the case of the **American Cyanamid Co. vs Ethicon Ltd** [1975] AC 396 are as follows;

- (1) The Plaintiff must establish that he has a good arguable claim to the right he seeks to protect;
- (2) The Court must not attempt to decide this claim on the affidavits; it is enough if the plaintiff shows that there is a serious question to be tried;
- (3) If the plaintiff satisfies these tests, the grant or refusal of an injunction is a matter for the exercise of the Court's discretion on the balance of convenience.

Determination:

The present proceedings were commenced on the 1st day of December, 2017 which date is after the said Rules had already come into effect. It would therefore, follow that the relevant provisions to be applied in the determination of this application are the said Rules and not the Rules of the Supreme Court. In this regard the first question to be considered is; “is there a serious question to be tried?”

From both the sworn statement in support of this application and the sworn statement in opposition it is evident that there is a serious question to be tried, to wit, does the Claimant have any right to continue managing the trust or the College which the Defendant is, allegedly, attempting to take over?

It is the view of this Court that the determination of this question will require the Court to, *inter- alia*, consider the validity of Exhibits “SV1”, the Agreement dated the 18th day of November, 2015 executed between the parties hereto and “SV3,” the Return of the trustees of the Scriptura Bible Training College filed with the Registrar General on the 18th day of October, 2016, etc. It is the further view of this Court that it will also be pertinent to establish if there are valid reasons why the Defendant should be allowed to take with the left hand that which he had voluntarily given with the right hand.

It is, in the premises, the finding of this Court that the Claimant has satisfied the first condition for the grant of an order of interlocutory injunction under Order 10 Rule 27 of the said Rules.

The second question to be considered is: “would damages not be an adequate remedy if the order of interlocutory injunction is refused?”

It has been strongly contended by the Defendant that if the order of interlocutory injunction is not granted the Claimant would not suffer any damages because the College is trust property and not the Claimant's. It is thus the prayer of the Defendant that the order should not be granted.

With due respect to the Defendant, it is the considered view of this Court that the Defendant has somehow misconceived the Claimant's case herein because the Claimant's case before this Court is not that the College is his personal property. From both the statement of the case and the sworn statement in support of this application the Claimant has clearly averred that all the properties of the College are owned by the trustees and that he is one of the trustees. As one of the trustees he is, no doubt, under a legal obligation to preserve and protect the properties and assets of the trust. And since the Defendant is, allegedly, attempting to take over the College in violation of Exhibit “SV1”, aforesaid, and Exhibit “SV2”, the Constitution of the Registered Trustees of Sola Scriptura Bible Training College, the Claimant as one of the trustees is under a duty to prevent him from doing so.

It has been held that damages for the disruption of a business would be difficult to assess- see: **Merchant Adventures Ltd v Grew & Co.** [1972] Ch. 246 at p256.

Turning to the case at hand, there is no doubt in this Court's judgment that damages for the disruption of the operations of the Sola Scriptura Bible College as a result of the change in the management thereof would be just as difficult to assess as the disruption of an ordinary business entity.

It is, in the premises, the finding of this Court that the Claimant has satisfied the second condition for the grant of an order of interlocutory injunction under Order 10 Rule 27 of the said Rules.

The third and final question to be determined is: “would it be just to grant the order of interlocutory injunction in the present application?”

It is the considered view of this Court that it is quite possible that by the time the action is to be determined unwelcome developments may have taken place at the College which the Claimant and the other trustees may find difficult to explain or put right. Leaving the matter until the determination or trial of the action may thus fail to achieve justice. In the premises, justice of the

matter would demand that the status quo be maintained by granting an order of interlocutory injunction against the Defendant.

It is, in the premises, the finding of this Court that the Claimant has also satisfied the third condition for the grant of an order of interlocutory injunction under Order 10 Rule 27 of the said Rules.

The Claimant having thus satisfied all the three conditions for the grant of an order of interlocutory injunction under Order 10 Rule 27 of the said Rules, this Court now proceeds to order that the Defendant be and is hereby restrained from interfering with the operations of the Scriptura Bible Training College in Nkhata-Bay District until the determination of the action or until a further order of the court. This Order is made subject to the usual undertaking as to damages in the event that any may have been occasioned by the Defendant as a result of the grant thereof which the Claimant ought to pay.

The costs:

The costs are in the discretion of the court and normally follow the event. The Claimant being the successful party herein shall thus have the costs of this application in any event. It is so ordered.

Dated this 13th day of July2018


Chirwa, J

JUDGE