



IN THE HIGH COURT OF MALAWI
CIVIL DIVISION
PRINCIPAL REGISTRY
CIVIL CASE NO. 286 OF 2018

BETWEEN

GEOFFREY CHAMHANYA AND TWELVE OTHERS CLAIMANTS

AND

ATTORNEY GENERAL (SECRETARY TO THE
TREASURY DEFENDANT

Coram: Hon. Justice Nriwa, Judge

For the claimants Mr Minjale and Mr Kumitengo

Ms Mtegha Court Official

RULING

Yesterday, I declined to grant an injunction to the claimants. The applicants sought an order to stop the defendants from terminating their contracts of employment without following a due process. I said the application was not in support of any cause of action in this Court. I further said that even if there were a cause, the claimants' claim was remediable by compensation.

Counsel appeared before me to state that they have a reason to believe that the claimants have a cause of action. They, however, said that they had not yet commenced a case against the defendant. They hinted that they may commence an action in the Industrial Relations Court.

Counsel raised some issues why this Court should grant the injunction:

- That if the matter goes to the Industrial Relations Court, the matter would delay. The matter may take up to two years. The matter is urgent.
- The High Court is the only hope for the claimants' remedy. This would send a message to employers not to take advantage of delays in the Industrial Relations Court to infringe on employees' rights

- Since the offices where the claimants were working are closing, they will have nowhere to claim a remedy. They cannot get compensation as a remedy.
- The claimants had automatic renewals of the contracts and expected that to be the case until April 2019
- It is unfair for the defendant to terminate the contracts on the ground of lack of funding, yet they were assured of funding

I have listened to the arguments by counsel.

I have also gone through the documents in support of the application.

I am not convinced that I should grant the injunction. Still, there is no cause of action so far. The claimants are seemingly anticipating to commence a matter in the Industrial Relations Court. Therefore, so far, there is no cause action. The cause of action is merely anticipatory. Basically, an injunction is not in itself a cause of action; it must be auxiliary or incidental to a cause of action.

Hon Kenyatta Nyirenda J said in *Jumbe v Robert and Chipagara* Civil Cause Number 186 of 2017,

...it is worth remembering that the right to an injunction is not a cause of action in itself: See *The Siskina* [1979] A.C. 2010 and *Channel Tunnel Group Ltd v Balfour Beatty Construction* [1993] A.C. 334 at 360-362.

The Honourable Judge quoted Lord Diplock, in *The Siskina*:

A right to obtain an interlocutory judgment is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action.

Secondly, the arguments of the claimants do not, in my view, dispel my opinion that the claimants' claims are remediable by compensation. The claimants may fashion their argument in many ways: whether they want a due process, whether their rights to administrative justice suffered and so on and so forth. However, in my analysis of the claim, the claimants' claim is against the termination of the contracts until April, 2019. In my view, that is a matter that is remediable by damages.

I do not believe that all what the claimants want is for the defendant to follow the due process.

The other thing that has exercised my mind is the practicability of decisions by Courts to stay workplace decisions of dismissals or terminations of employment. It has to be exhibited that balance of convenience tilts in favour of the injunction (See *Lew v Board of Trustees of United Synagogue* [2011] IRLR 664). This is because once there is termination or dismissal, emotional issues might arise (*Robb v London Borough of Hammrsmith and Fulham* [1991] IRLR 72. Issues of confidence and trust might also arise. Then there is a question of workability of the contract. Yes, the claimants argue that the defendant argued that there is no more funding. They argue there is. That issue is factual. It may be contentious. That, though, is not for this juncture.

All in all, I do not find convincing reasons to depart from the decision I made.

MADE the 19th day of September, 2018



J N RIVA

JUDGE