



IN THE HIGH COURT OF MALAWI
CIVIL DIVISION

(LILONGWE DISTRICT REGISTRY)

CIVIL CAUSE NO. 1131 OF 2016

(Being Consolidation of Civil Cause Numbers 1131 of 2016 & 124 of 2016, 151 of 2017, 156 of 2017, 1130 of 2017 and 1132 of 2016)

LILONGWE CITY COUNCIL.....PLAINTIFF

-AND-

A.T.BAISI.....1st DEFENDANT

H.K.K.FULU.....2ND DEFENDANT

V.W.GHAMBI.....3RD DEFENDANT

CHRISTIAN COUNCIL.....4TH DEFENDANT

CHINJOKA MOTORS.....5TH DEFENDANT

Coram: Hon. Justice Dr. C.J.Kachale, Judge

Matumba, of Counsel for the Plaintiff

Kubwalo, of Counsel for the 1st Defendant

Kitta, of Counsel for the 2nd and 3rd Defendants

4th Defendant, Absent and not legally represented (though served with process)

5th Defendant, Present but not legally represented

Nyalaya (Mrs.), Court Reporter

Choso, Official Interpreter

JUDGMENT

1. On 2nd February 2018 this court heard the present proceedings which have been brought by Lilongwe City Council on the basis of section 91 of the Local Government Act (Cap 22:01). The Council is seeking court orders to seize and sell various properties for non-payment of city rates. The defendants have raised different defences to the action: in some cases the extent of the rates in arrears has been contested, in others the defendant claims to be a mere tenant and not owner of the property, whilst others still request for an order to pay the arrears in instalments.
2. In dealing with the case it is important to set out the applicable law in detail. Section 91 of the Local Government Act says

(1) In addition to any remedy provided under Part VI relating to recovery of debt, if any sum due for any rate levied on any assessable property

remains unpaid for a period of three years after the date upon which such sum became payable *the Council shall publish a notice in the Gazette and a newspaper circulating in the local government area showing the name and address of the owner*, the description of the property, the amount of rates outstanding, requiring the owner to pay the arrears within thirty days of the date of publication of the notice.

(2) If the arrears are not paid within the stated period in subsection (1) after notice to any mortgagee, the property shall be seized by the Council through a court of law and thereafter sold by public auction in satisfaction of the rate due.

(3) The Council shall give *notice of the sale by advertisement in the Gazette and a newspaper* circulating within the local government area.

(4) The owner may recover possession of the property by paying in full all arrears and expenses incurred by the Council at any time before the sale.

(5) In the event of sale the Council shall retain out of the proceeds the amount of arrears and surcharge and the costs of sale which shall have priority over any other registered or unregistered interest in the property and shall be charged as trustee to those who may be entitled to the balance, if any, of the proceeds of the sale.

(6) A sale of a property under the provisions of this section shall pass a good and sufficient title.

(7) Nothing in this section shall prevent the Council from taking proceedings for recovery by ordinary action in the court.

(8) No liability for error or irregularity shall attach to the Council or to any employee of the Council arising from the exercise by the Council of powers granted under this section. (*Emphasis supplied*)

3. Thus according to the law which the Lilongwe City Council is seeking to enforce its right to levy city rates, any defaulter should be published in the Gazette and a newspaper of local circulation within the affected local government area; the law clearly stipulates that the publication must be in both the Gazette and a newspaper of local circulation. The plaintiff has thus attached copies of newspaper adverts in respect of the various properties under consideration. In addition Malawi Government Gazette of 14th July 2017 (3,400: Vol LIV No.281) has also been produced to show that similar publication was made in compliance with the law. According to section 89 of the Local Government Act such Notices may actually become admissible proof of the rates being claimed against a specific property.

4. Once such a publication has been properly made, it becomes incumbent upon the property owner to remedy the default within 30 days of such

publication or risk losing the property through a court sanctioned seizure for purposes of selling to recover the unpaid city rates. In the context of effective local government administration the importance of collecting revenue through rates for proper delivery of social services and general governance of the relevant local government area cannot be overemphasized (see sections 44 (1) and 79(1) of the Local Government Act on sources of revenue). According to section 90 of the Local Government Act the city rates are attached to the property itself (hence the remedy to seize the same and realise the funds from its sale).

5. According to the Gazette of 14th July 2017, the following were the respective arrears in respect of each property:

- i. Plot Number 8/VE1 (*Chinjoka Motors*): K8,062,401.42
- ii. Plot Number 40/22 (*Christian Council*): K6,209,485.47
- iii. Plot Number 50/7 (*A.T.Baisi*): K102,966,921.85
- iv. Plot Number 12/296 (*HKK Fulu*): K3,632,428.90

6. Though *Mr. Goodall Mkandawire* t/a *Chinjoka Motors* entered a defence to the effect that he is not the owner of the land in issue, to the extent that the debt attaches to the land, such a line holds no water in these proceedings. In principle, one of the chief aims of the legal requirement for publishing the rates arrears in both the Gazette as well as a newspaper of wide circulation in the affected area must be to notify any such 'non-traceable' landlords so to speak. If *Mr. Mkandawire* was a *bona fide* tenant surely he would have brought this development to the attention of his landlord (instead of hoping to raise that flimsy proposition as a legitimate defence to a claim which threatens the very ownership of the land in issue).

7. Similarly, *A.T.Baisi* has argued that the plaintiff has failed to establish the extent of his arrears. However, an analysis of the evidence shows that the City Council did explain how that figure was arrived at (see paragraph 5 of *A.T.Baisi's* affidavit in opposition). More importantly this argument misses the stipulations of section 78 of the Local Government Act which states that

"The rates levied upon a property in respect of which an objection or appeal has been lodged shall be payable according to the valuation

appearing in the valuation roll or supplementary roll pending the determination of the objection or appeal.”

8. The law does not disallow any challenge to the rate being levied by the City Council; it simply makes that challenge conditional upon payment of the sum assessed. In this instance, therefore, *Mr. A.T. Baisi* should first pay and then he can contest the sum levied through the appropriate mechanisms. Thus, on the law as it stands, the City Council would be entitled to seize and sell the property in order to remedy the gazetted for default in city rates on Property Title Number 50/7 within the City of Lilongwe.
9. As for Property Title Number 28/37 for *V.W. Ghambi* though no Gazette publication has been established, the defendant has not contested being in arrears. Rather he has simply asked the court to order that the same be paid in arrears. In so far as the present proceedings are premised upon section 91 of the Local Government Act, such a relief might not be available as of right to the defendant. In this instance the council has reached the decision that the best means to remedy the rates-default would be to seize and sell the property in question; it would be irregular to order a different remedy to what the plaintiff has lawfully chosen to exercise in this situation; so that line of defence must accordingly fail.
10. This interpretation of section 91 (2) as creating a specific remedy for seizure and sale is buttressed by reference to subsection 7 which states that

“Nothing in this section shall prevent the Council from taking proceedings for recovery by ordinary action in the court.”

Ordinary reading of this provision implies that proceedings for seizure and sale are distinct from ‘*proceedings for recovery by ordination action in the court.*’ The law makes it rather clear that invoking section 91 procedure will not in any way impair the rights of the city council to institute ordinary civil proceedings to recover a debt (which in this case is comprised of the unpaid city rates). In other words, had there been proceedings for recovery of the arrears as a debt owing to the City Council, then the remedy of payment by instalments might arise to the aid of the defendants. That, unfortunately, is

not the scenario under consideration; herein the Council is seeking court orders under section 91(2) to seize and sell in order to satisfy the unpaid rates.

11. In the end therefore, the court is satisfied that Lilongwe City Council has established through the Gazette and newspaper publications that all the defendants are in default of city rates in respect of the various properties. The Council has complied with the dictates of section 91 of the Local Government Act. Accordingly the court hereby orders that the following properties may be seized and sold in accordance with the relevant legal stipulations:

- i. Plot Number 8/VE1* (Chinjoka Motors; K8,062,401.42)
- ii. Plot Number 40/22* (Christian Council; K6,209,485.47)
- iii. Plot Number 50/7* (A.T.Baisi; K102,966,921.85)
- v. Plot Number 12/296* (H.K.K. Fulu; K3,632,428.90)
- vi. Plot Number 28/37* (V.W.Ghambi; K5,001,957.14).

12. Costs are for the Plaintiff i.e. Lilongwe City Council.

Made in open court this 11th day of June 2018 at Lilongwe.

C.J.Kachale, PhD
JUDGE