

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 120 OF 2017

BETWEEN:

SIMEON CHIWALO

PLAINTIFF

AND

SUZENI PONDANI (NEE MPIRA)

1st DEFENDANT

SUB TRADITIONAL AUTHORITY MAONI

2nd DEFENDANT

**SENIOR GROUP VILLAGE HEADMAN
MANGULAMA**

3rd DEFENDANT

TRADITIONAL AUTHORITY NKALO

4th DEFENDANT

CORAM: JUSTICE M.A. TEMBO,

Master, Counsel for the Plaintiff
Chagwamnjira, Counsel for the Defendants
Mankhambera, Official Court Interpreter

ORDER

This is the order of this Court on the defendants' application that the order of injunction earlier granted to the plaintiff in this matter be vacated for the reason that the status quo that existed at the time the order of injunction was granted no longer exists and that there is no need for the preservation of the status quo by injunction.

The facts of this matter are as follows.

On 12th April 2017 the plaintiff applied ex parte for an order of interlocutory injunction in the following terms. He sought an order of injunction restraining the 1st defendant from exercising chieftaincy powers over Takhiwa village and also restraining the 2nd, 3rd and 4th defendants from implementing their decisions to install the 1st defendant as Group Village Headwoman Takhiwa and from interfering with the plaintiff's exercise of chieftaincy powers over Takhiwa village until determination of this matter or further order of this Court.

This Court granted the order of injunction ex parte pending determination of the plaintiff's claim or further order of this Court. There was a provision that there be an inter partes hearing at which the defendants would be heard with regard to continuation of the ex parte order of injunction up to the time of trial of this matter.

There were problems to do with the legal representation of the defendants in this matter and the inter partes application was eventually heard on 19th October 2017 and the order of injunction was ordered to continue until determination of this matter. The defendants in fact did not contest the inter partes application and agreed to the continuation of the injunction.

By the present application the defendants sought an order to vacate the inter partes injunction on the basis that the status quo that existed at the time the order of injunction was granted inter partes no longer exists and that there is no need for the preservation of the status quo by injunction.

The plaintiff made a preliminary objection to the defendants' application arguing that it was irregularly made contrary to the applicable procedure. This Court deals with the preliminary objection first. Consideration of the defendants' application to vacate the injunction will depend on the outcome of the plaintiff's preliminary objection.

The plaintiff's objection is that the defendants are not entitled to make the instant application to vacate the interlocutory injunction that was granted at an inter partes hearing but rather to appeal against the same.

The plaintiff relied on the decision in the case of *Kasema v National Bank of Malawi* civil cause number 229 of 2001 (High Court)(unreported).

The defendants conceded that indeed the decision in *Kasema v National Bank of Malawi* represents the law.

The defendants however contended that the interlocutory injunction granted inter partes in this matter is amenable to be varied under Order 10 rule 4 of the Courts

(High Court)(Civil Procedure) Rules because it was premised on two grounds, namely, that the rest of the defendants making the appointment of the 1st defendant in this matter had no authority to do so and further that there was a subsisting appeal by the plaintiff against the said defendants that have powers to appoint and install chiefs pending before Senior Chief Kadewere.

The defendants contend that the appeal against their decision appointing the 1st defendant as village head has since been determined before Senior Chief Kadewere. And that obviously the said defendants have power to appoint the 1st defendant as village head under the Chiefs Act.

The defendants contend that in the circumstances, they are entitled to have the interlocutory injunction varied or set aside because the basis on which it was made has ceased to exist.

The plaintiff replied that the duration of the interlocutory injunction was until the determination of this matter before this Court and not pending the appeal before Senior Chief Kadewere.

This Court has observed that, as rightly contended by the defendants, the plaintiff's statement of claim seeks a declaration that the 2nd, 3rd and 4th defendants have no power to appoint the 1st defendant as village head. Obviously the Chiefs Act clearly gives a Traditional Authority such as the 4th defendant power to appoint village heads under the Chiefs Act.

However, the plaintiff further seeks a declaration that, as between himself and the 1st defendant, it is him who is the rightful person to continue as village head since he has served as such for a long time. On account of that claim the plaintiff sought the interlocutory injunction herein until this matter is determined.

An inter partes hearing on the plaintiff's application for an interlocutory injunction was therefore had and an order of interlocutory injunction was subsequently granted on the basis that, the status quo be preserved, in that the plaintiff continue as village head until the issue as between himself and the 1st defendant as to who is rightful person to be village head is determined before this Court.

As correctly submitted by the plaintiff, the issue of the appeal before Senior Chief Kadewere did not feature in this Court's consideration of the inter partes application for injunction.

This Court therefore agrees with the plaintiff that the right way to proceed was to appeal against the order of injunction that was made inter partes herein because the basis for that injunction has not ceased to exist as alleged by the defendants.

The basis still remains that this Court must determine as to who between the plaintiff and the 1st defendant is the rightful person to be village head in the circumstances of this matter.

This Court has noted that although the defendants could apply for an interlocutory order under Order 10 rule 4 of the Courts (High Court)(Civil Procedure) Rules that does not allow the defendants to apply to set aside an order of interlocutory injunction granted on an inter partes application.

In fact, Order 10 rules 27-30 Courts (High Court) (Civil Procedure) Rules are self-sufficient in that they allow this Court to make an order of interlocutory injunction on terms it considers just.

In the present case, this Court made an order of interlocutory injunction ex parte due to the urgency of the situation and put in a term that there be an inter partes application subsequently. The inter partes application was filed, heard and determined.

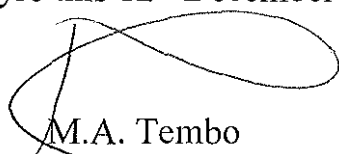
The defendants if aggrieved must appeal but cannot come back to this Court to seek variation of the said inter partes order.

There is nothing in Order 10 rules 27-30 Courts (High Court) (Civil Procedure) Rules allowing an aggrieved party to seek variation or discharge of an interlocutory injunction after an inter partes hearing. This is in contrast to the provisions in relation to freezing and seizing injunctions which are amenable to be varied or set aside on application.

The objection by the plaintiff is therefore well taken and the defendants' application is dismissed for procedural irregularity with costs to the plaintiff.

Mediation having already been terminated before this Court, this matter shall come for a scheduling conference as per the relevant Rules so that trial directions are made. See Order 14 Courts (High Court) (Civil Procedure) Rules.

Made in chambers at Blantyre this 12th December 2018.


M.A. Tembo
JUDGE