



**JUDICIARY  
IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY (CIVIL DIVISION)  
CIVIL CAUSE NO. 90 OF 2020**

**BETWEEN**

**EXAGRIS MCHINJI LIMITED ..... CLAIMANT**

**AND**

**GROUP VILLAGE HEADMAN KUNKHWALA ..... 1<sup>ST</sup> DEFENDANT**

**VILLAGE HEADMAN KAYEMBE ..... 2<sup>ND</sup> DEFENDANT**

**VILLAGE HEADMAN WHITE ..... 3<sup>RD</sup> DEFENDANT**

**VILLAGE HEADMAN JUDDIE ..... 4<sup>TH</sup> DEFENDANT**

**MR SIKOCHI ..... 5<sup>TH</sup> DEFENDANT**

**CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA**

Mr. Mphote, of Counsel, for the Claimant

Ms. Jonasi, Senior Legal Aid Advocate, for the Defendants

Mr. Henry Kachingwe, Court Clerk

---

**RULING**

---

*Kenyatta Nyirenda, J.*

This is my Ruling on an inter-partes application by the Claimants for an interlocutory injunction. The application is brought under Order 10, r. 27, of the Courts (High Court) (Civil Procedure) Rules, 2017 [Hereinafter referred to as the “CPR”].

The Claimant seeks an order of interlocutory injunction restraining the Defendants by themselves, their families, servants, agents or whomsoever from using, renting or leasing, cultivating and developing land situated at Dickson Village in Mchinji District known as Mchaisi farm.

The application is supported by a statement, sworn by the Claimant's Managing Director, Mr. Bernardus de Wet, which reads as follows:

- “1.4 In or around December 2018 Exagris Mchinji Limited acquired land situated at Dickson Village in Mchinji district known as Mchaisi farm of about 800.434 hectares from Yiannakis Brothers Farms limited. A copy of the transfer document is attached and marked “CB 1”.*
- 1.5 Since its acquisition, the farm had been operating without any problems until around this year when the Defendants and their families suddenly encroached onto the land and started living and cultivating on the said land.*
- 1.6 When we conducted investigations as to who might have ordered the families to come to the land and start living on the land, it was found that the same was instigated by the 1<sup>st</sup> Defendant. No reason was given as to why the 1<sup>st</sup> Defendant had ordered the people to start encroaching on the said land.*
- 1.7 The issue was reported to Kapiri Police, Mchinji Magistrates court all the way to the Paramount Chief but the same has been fruitless as the Defendants are denying to leave the land.*
- 1.8 As of this date people are taking flowing onto the estate and sharing the said estate and cultivating in preparation of the next growing estate. However, they are currently threatening our employees and our employees cannot do anything.*
- 1.9 At the time of filing this application, there were almost 50 new families cultivating on the said land a situation which has halted normal operations on the farm as there is tension between my workers and the defendants and their families.*
- 1.10 It is with regard to the foregoing that I maintain a prayer for an interim interlocutory order of Injunction restraining the defendants either by themselves, families, servants, agents or whomever from developing, cultivating, leasing, renting or using the said land in any way until the final determination of the matter herein.*
- 1.11 I verily believe that the acts of the Defendants and their families and clans amounts to a clear violation of the Claimant's right to a quiet and peaceful ownership of property as guaranteed in the republican constitution.*
- 1.12 What the Defendants are doing amount to trespass and clearly the balance of Justice and fairness militate towards granting an interim injunction pending the hearing of this matter.*
- 1.13 Allowing the defendants to continue using the land in any way amounts to depriving the Claimant it's rightfully owned property.”*

The Defendants are opposed to the application and they rely on the following statement, sworn by the 1<sup>st</sup> Defendant:

- “3. **THAT** I refer to paragraphs 1.4 of the Claimant’s sworn statement and state that the land that the Claimant bought is in Dickson village while the land that the villagers of Kunkhwala are farming on is in Kunkwala village.
4. **THAT** Group Village Headman Chimwala gave the land in question to us the villagers of Kunkhwala village and we have been farming on the land peacefully since 1972.
5. **THAT** the Claimant bought land that is situated in Dickson village in 1992 which is near Kunkhwala village.
6. **THAT** in 2019 the Claimant encroached into our land, the Claimant was grazing its cattle on our land and we lodged a complaint before T/A Dambe.
7. **THAT** in 2019 T/A Dambe held that the land that the Claimant bought is in Dickson village while the land that we have been cultivating on belongs to our village, Kunkhwala village.
8. **THAT** I refer to paragraph 1.5 of the Claimant’s sworn statement and state that we have always been farming on our own land in Kunkhwala village and we have never encroached into the Claimant’s land as the Claimant alleges.
9. **THAT** I refer to paragraph 1.6 of the Claimant’s sworn statement and state that I have never ordered the villagers to encroach into the Claimant’s land.
10. **THAT** I refer to paragraph 1.6 of the Claimant’s sworn statement and state that neither I or any of the villagers have been summoned to appear at Kapiri Police station, or before the Magistrates Court in Mchinji or any paramount Chief as the Claimant alleges.
11. **THAT** I refer to paragraph 1.8 and 1.9 of the Claimant’s sworn statement and I aver that I and the villagers of Kunkwala village are farming on the land that belongs to Kunkhwala village.
12. **THAT** we have never distributed or cultivated on the land that belongs to the Claimant which is situated in Dickson village
13. **THAT** if the injunction is granted, greater injury and risk will be caused to me and the villagers of Kunkwala village who are the rightful owners of the land in question.”

An interlocutory injunction is a temporary and exceptional remedy which is available before the rights of the parties have been finally determined. Order 10, r. 27, of the CPR provides that a court may grant an injunction by an interlocutory order when it appears to the court that (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.

Having carefully read and considered the sworn statements and the submissions by Counsel, it is very clear to me that the facts in the present case are very much in dispute. Both parties, the Claimant on one side and the Defendants on the other side, claim to be the owners of the land in dispute. I, therefore, find that the matter raises triable issues.

As the subject of the present case relates to real property, there is really little to say on the matter. It is trite that every piece of land is of particular and unique value to the owner and damages are an inadequate remedy and, in any case, damages would be difficult to assess: see Chitty on Contract – General Principles, 26<sup>th</sup> ed., Sweet and Maxwell at paragraph 1868 and the decision by the Supreme Court of Appeal in **Village Headman Kungwa Kapinya and Others v. Chasato Estates Ltd, MSCA Civil Appeal No. 75 of 2016 (unreported)**.

As regards the balance of justice, sometimes it is best to grant an injunction so as to maintain the status quo until the trial and at other times, it is best not to impose any restraint on the defendants: see **Hubbard v. Vosper [1972] 2 Q.B. 84**.

In the present case, it will be recalled that the main thrust of the case of the Defendants is that the land that they have been farming on since 1972 is in Kunkwala village. They further state that the Claimant's land is in Dickson village. These statements have not been contested.

Having considered the foregoing, I am inclined to the view that the balance of justice lies in maintaining the status quo, particularly when regard is had to the uncontested fact that the Defendants been cultivating on the land for several decades and have already planted their crops for this growing season. Accordingly, the application for an interlocutory injunction is dismissed with costs.

Pronounced in Chambers this 22<sup>nd</sup> day of December 2020 at Lilongwe in the Republic of Malawi.

**Kenyatta Nyirenda**  
**JUDGE**