



**JUDICIARY
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY (CIVIL DIVISION)
CIVIL CAUSE NO. 115 OF 2020**

BETWEEN

BRADFORD KATSACHE CLAIMANT

-AND-

LILONGWE CITY COUNCIL DEFENDANT

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA

Mrs. Dalla, of Counsel, for the Claimant

Mr. Santhe, Chief State Advocate, for the Defendant

Mr. Henry Kachingwe, Court Clerk

RULING

Kenyatta Nyirenda, J.

This is my Ruling on an inter-partes application by the Claimant 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 Defendant either himself or his servants, or agents or whomsoever from dealing, and interfering Plot Number 25/3/44 in the Lilongwe Land Registry pending the determination of the matter or until a further order of the Court.*”

The application is supported by a statement, sworn by the Claimant, which reads:

- “3. **THAT** I was working for Wudstill Furniture Ltd in 1970 and I was given house number 1179 in Area 25 in the City of Lilongwe as company house.
4. **THAT** Wudstill Furniture Ltd had a tenancy agreement with Capital City Development Cooperation. I produce a copy of the agreement marked and exhibited as “**BK1**”.

5. **THAT** I was informed by then employers Wudstill Furniture Ltd that the house would be mine after rending the same for a period of 20 years.
6. **THAT** since 1998 I stopped paying rentals to both Capital City Development Cooperation and Lilongwe City Council.
7. **THAT** I have been paying city rates for the house since then. I produce a copy of the city rates statement marked and exhibited as “**BK2**”.
8. **THAT** Lilongwe City Council has never in the past years demanded any rentals from me.
9. **THAT** I have had undisturbed peaceful occupation of the house since 1998.
10. **THAT** the Lilongwe City Council has had no contest over the house.
11. **THAT** on 7th July, 2020, Lilongwe City Council wrote me demanding that I prove ownership of the house or be charged rentals. I produce a copy of the letter marked and exhibited as “**BK3**”
12. **THAT** unless order of injunction is granted the Defendant will continue with their plans and acts to evict me from the house and render me homeless.
13. **THAT** there is need for an order of injunction against the defendant stopping him and its servants, or agents or whomsoever from asserting any rights dealing, interfering, and developing the plot in any manner whatsoever.
14. **THAT** I responded to the said Council on 19th August, 2020 stating that I had adverse possession of the house through my lawyers. I produce a copy of the letter marked and exhibited as “**BK4**”.
15. **THAT** the Defendant responded stating that they would evict me from the property. I produce the letter marked and exhibited as “**BK5**”.
16. **THAT** it is just and equitable in the circumstances that an order of injunction be granted on the matter to preserve the status quo.”

The Defendant is opposed to the application and it relies on the following statement, sworn by the Defendant’s Assistant Legal Officer, Mr. Alickson Msukwa:

- “5. **THAT** the Defendant is the landlord of Traditional Housing Area including Area 25 sector 3.
6. **THAT** Capital City Development Corporation constructed houses in Area 25 which were rented to people.
7. **THAT** one of the houses is the one currently occupied by the Claimant.
8. **THAT** Capital City Development Corporation was wound up on 1st April, 1984 and handed over the management of Traditional Housing Areas to Malawi Housing Corporation. I produce the copy of the Capital City Development Corporation (Winding-Up) Order marked and exhibited as **AM I**.

9. **THAT** Malawi Housing Corporation handed over the management of the traditional Housing Areas to the Defendant. I produce the copy of the Local Government (Urban Areas) (Property Transfers) Order, 1992 marked and exhibited as **AM 2**.
10. **THAT** I refer to paragraphs 4 and 5 of the sworn statement of the Claimant and state that the Respondent does not have information in relation to the agreement between Capital City Development Corporation and Wudstil Furniture Pvt Limited. I would not make any further comment because no agreement has been exhibited.
11. **THAT** I refer to paragraph 6 of the sworn statement of the Claimant and state that the Defendant took over the management of the assets from Malawi Housing Corporation and the Defendant has no record to show that the Claimant has been paying rentals to the Defendant.
12. **THAT** I refer to paragraph 7 of the sworn statement of the Claimant and make no comment
13. **THAT** I refer to paragraphs 8, 9 and 10 of the sworn statement of the Claimant and state that the Defendant wrote the Claimant on 10th July, 2012 to provide ownership documents in relation to house on plot number 25/1179 failing which he would be evicted and the Claimant responded by stating that the property was owned by him. I produce the copy of the letter dated 26th August 2012 marked and exhibited as **AM 3**.
14. **THAT** the Defendant wrote the Claimant on 30th October, 2012 requesting him to vacate the house. I produce the copy of the letter marked and exhibited as **AM 4**.
15. **THAT** the Claimant approached State House through Social-economic Rights Activist, Mr. Mavuto Bamusi, that the Council was victimizing the elderly woman by evicting her from her house. I produce the copy of a report dated 12th November, 2012 marked and exhibited as **AM 5**.
16. **THAT** the State House requested the Ministry of Gender & Social Welfare and Ministry of Persons with Disabilities and the Elderly to investigate the matter and the Defendant suspended eviction. I produce the copy of suspension letter dated 23rd November, 2012 marked and exhibited as **AM 6**.
17. **THAT** I refer to paragraph 11 of the sworn statement of the Claimant and admit the contents and it is therefore a misrepresentation of facts to state that the issues started with issuance of the letter dated 7th July, 2020.
18. **THAT** I refer to paragraphs 12 and 13 of the sworn statement of the Claimant since the Claimant failed to provide any document in relation to ownership or arrangement over the house on plot number 25/1179 which was there between Capital City Development Corporation and his employer, Wudstil Furniture Pvt Limited the Defendant would proceed to evict the Claimant as he is staying in a house without paying rent.

19. ***THAT*** I refer to paragraphs 14 and 15 of the sworn statement of the Claimant and state that adverse possession does not apply to public land.
20. ***THAT*** the Claimant has exhibited the unsigned Tenancy Agreement between Capital City Development Corporation and his employer, Wudstil Furniture Pvt Limited which is not valid.
21. ***THAT*** from the foregoing, I verily believe that there is a genuine defence and prospect of success.
22. ***THAT*** it is therefore our humble prayer that the application herein should be dismissed with costs."

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.

It is trite that a party seeking an interlocutory injunction must give a frank and full disclosure of all material matters of both fact and law: **The State v. Malawi Communications Regulatory Authority, ex-parte Capital Radio Malawi Limited and Joy Radio Limited, HC/PR Judicial Review Cause No. 29 of 2011, unreported.**

In **R v. The General Commissioners for the Purposes of the Income Tax Acts for the District of Kensington, ex parte Princess Edmond de Polignac [1917] 1 KB 486**, Lord Cozens-Hardy M.R, observed thus at page 504:

*"The authorities in the books are so strong and so numerous that I propose to mention one which has been referred to here, a case of high authority, **Dalglish v. Jarvie 2 Mac. & G, 231, 238**, which was decided by Lord Langle and Rolfe B. The head-note, which I think states the rule quite accurately, is this: "It is the duty of a party asking for an injunction to bring under the notice of the court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any facts which he has omitted to bring forward." Then there is an observation in the course of the argument by Lord Langdale: "It is quite clear that every fact must be stated, or, even if there is evidence enough to sustain the injunction, it will be dissolved. That is to say he would not decide upon the merits, but said that if an applicant does not act with uberrima fides and put every material fact before the Court it will not grant him an injunction, even though there might be facts upon which the injunction might be granted, but that he must come again on a fresh injunction". – Emphasis by underlining supplied*

In the present case, the Claimant was very mean in disclosing relevant information to the Court. It will be observed that the Claimant was very bold in categorically

stating that the Defendant “*has had no contest over the house*”: See paragraph 10 of the Claimant’s sworn statement. This statement is clearly false. The Claimant chose to suppress matters contained in paragraphs 13 to 18 of the sworn statement by Mr. Msukwa, which matters are fully supported by documents. There can be no question of the materiality of the above-mentioned facts.

In view of the foregoing and by reason thereof, I have no option but to dismiss application. It is so ordered.

Pronounced in Chambers this 23rd day of December 2020 at Lilongwe in the Republic of Malawi.



Kenyatta Nyirenda
JUDGE