



**JUDICIARY
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY (CIVIL DIVISION)
CIVIL CAUSE NO. 736 OF 2020**

BETWEEN

EVERTON CHIMULIRENJI CLAIMANT

AND

MATTHIAS BONONGWE DEFENDANT

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA

Mr. Taulo, of Counsel, for the Claimant

Mr. Kam'mayani, of Counsel, for the Defendant

Mr. Henry Kachingwe, Court Clerk

RULING

Kenyatta Nyirenda, J.

This is this Court's ruling on an application by the Claimant for the following interim relief:

- "a. An order of interlocutory injunction against the Defendant restraining him either by himself, his servants, agents or whosoever in any other form from visiting any of the Claimant's premises or place of business or interfering, dealing in any way with Claimant's goods pending the hearing and final determination of the substantive matter.*
- b. That Restraining the Defendant from further publishing or cause to be published the said or similar defamatory statement that falsely accuse the Claimant to the general public that the Claimant owe the Defendant any sum of money pending the final hearing and determination of the substantive matter."*

The case commenced on 17th August 2020 with the Claimant issuing a Writ of Summons against the Defendant claiming (a) general damages for defamation and trespass, (b) permanent injunction restraining the Defendant or anyone from visiting the Claimant's premises or interfering with the Claimant's goods in anyway, (c)

permanent injunction restraining the Defendant from issuing any form of threats to the Claimant and (d) costs of the action.

On the same day, the Claimant filed an ex-parte application for an order of interlocutory injunction but I ordered the ex-parte application to come by way of an inter-partes hearing on 25th August 2020.

The application is supported by a statement, sworn by the Claimant, and the material part thereof provides as follows:

- “3. **THAT** sometimes in 2019 when I was working as a Minister responsible for Disaster Management, the Defendant approached me and requested if he could supply maize grain to the Ministry.
4. **THAT** upon hearing the request, I made it crystal clear to the Defendant that I had no authority to purchase or authorize any purchase of maize from anyone on behalf of the Ministry.
5. **THAT** further, I informed him that the Ministry do only receive maize grain from ADMARC and NFRA as Government agencies.
6. **THAT** amazingly, I did not know that such kind of innocent response could really create any legitimate expectation or binding agreement that could motivate the Defendant to go around telling the nation that I instructed him to supply maize to ADMARC and that he incurred some loss as result of my representation.
7. **THAT** I can confirm that I have never dealt with anyone or Defendant in any procurement issues or business that requires supplying of maize grain either to ADMARC or any Government agencies.
8. **THAT** the Defendant through himself and his legal Counsel demanded sum of the sum of MK 100,000,000.00 as the money lost in maize supply deal to ADMARC on allegation that I instructed him to supply maize grain to ADMARC which I can confirm it is not true and for my entire employment as the Minister responsible for Disaster I have never issued such kind of instructions. I attach hereto a copy of demand letter from his legal Counsel and marked “**Exhibit EC1.**”
9. **THAT** consequently I replied to the Demand letter through my Attorney Taulo & Associates through a letter dated 7th August wherein I made it clear to them that I have never issued such kind of instructions to the Defendant as alleged by him since had no authority to so do. I attach hereto the copy of the letter and marked “**Exhibit EC2.**”
10. the Defendant made several threats, including the recent one that he sent Bouncers on 11th August, 2020 to my premises at Chisapo/Likuni Area to collect some goods

on behalf of the Defendant who although left with nothing after reasoning out with them but promised to come back again and continue where they have stopped from.

11. *THAT as promised, the Defendant's agents came again on 14th August, 2020 this time with journalists and in large numbers while carrying MCP flags and threatened that this time around they will take all my personal properties.*
12. *THAT that due to the fears created by the noise these bouncers were making I telephoned Minister of Homeland Security who informed the Police Officers from Lilongwe about my situation and came to my rescue and arrested all the bouncers that came to violently seize my properties.*
13. *THAT Although some of the Defendant's men were arrested, the Defendant is still at large and there is an audio clip going around in social media in which he has promised to come again with other more men to my house, as a result my family and myself are living in fear.*
14. *THAT I can confirm that from best of my knowledge I have never obtained any money or involved in any business transactions as alleged by the Defendant and that is why the Defendant has decided to use unlawful means to embarrass me and my family.*
15. *THAT if the Defendant is not restrained from his conduct of making defamatory statement , in particular his conduct of falsely accusing me to the general public that I owe him some money my personal, family and my business reputation will continue to be seriously damaged and I will continue to suffer distress.*
16. *THAT I undertake to indemnify in damages shall it transpire that the injunction was improperly obtained.*
17. *THAT I believe that the damages would not be appropriate remedy for me as this concern my right to life, freedom of enjoyment of my premise as well as my reputation is being deprived and damaged without a law justification and the extent of this damage and threat thereof cannot be adequately compensated by damages.”*

The Defendant filed the following sworn statement in opposition:

“BRIEF BACKGROUND

3. *I first met the Claimant in or around August 2019 at his official residence in Area 12, Lilongwe, when I was introduced to him by a Mr. Matabwa and a Mr. Kamuyambeni and the meeting was facilitated by the said two gentlemen.*
4. *The purpose of my meeting with the Claimant at that time was to introduce to him Agri-Zone International Trading (AZIT), a company of which I am the Managing Director, and to discuss what AZIT offers as a company.*

5. *Sometime in or around December 2019, Dr. Heatherwick Ntaba came to AZIT offices in Area 14 and informed me that the Claimant wanted to see me on the next day. Dr. Ntaba was already personally known to me at the time.*
6. *The next day I met the Claimant in the company of Dr. Ntaba and members of AZIT marketing team where the Claimant sought further information about AZIT and committed to send a team to visit and inspect our warehouse in order to assess our capacity to supply 110, 000 metric tonnes of maize which he said was then needed at the Department of Disaster Management, through Agricultural Development and Marketing Corporation (ADMARC) and National Food Reserve Agency (NFRA).*
7. *A few days later our Mr. Ramsey Mbewe, AZIT Warehouse Manager and Duncan Mwangomba, AZIT Operations Manager, hosted a team sent by the Claimant to inspect our warehouses.*
8. *After the inspection of AZIT warehouses by the team sent by the Claimant, the Claimant arranged a meeting between AZIT team and ADMARC's General Manager, Mr. Felix Jumbe.*
9. *About three days after the inspection of our warehouse, I, in the company of Ramsey Mbewe and Robert Kaluwa, (AZIT Head of Marketing) for AZIT met Mr. Felix Jumbe and James Kaphale, General Manager and Company Secretary for ADMARC, respectively, at Capital Hotel in Lilongwe. The meeting was moderated by Dr. Ntaba.*
10. *At that meeting we were informed that ADMARC required us to supply 70, 000 metric tonnes of maize of the 110, 000 metric tonnes the Claimant had previously intimated to us as being required.*
11. *We agreed to supply the maize to ADMARC and it was also agreed that we would raise an invoice and get payment at every 2000 metric tonnes delivery intervals.*
12. *It was also agreed that transportation costs for the maize would be borne by ADMARC.*
13. *On our part we requested for a written contract for the supply of the maize as agreed at the meeting but Mr. Jumbe refused to enter into a formal agreement but instead assured us that we may supply the maize as agreed.*
14. *We refused to supply any maize without any formal written agreement and the meeting ended on that note.*
15. *On or around 10th January 2020, Dr. Ntaba, without prior notice, called me that he wanted to see me and he came to our offices in Area 14 at around 8:30 in the morning and found me in a meeting with some of AZIT Board members and requested an audience with me which I agreed to.*

16. *I met Dr. Ntaba whilst in the company of the said Board members, namely, Sister Anne Ganthu, Reverend Father Yepulani (both of the Catholic Church) and Mr. Ramsey Mbewe, and Dr. Ntaba demanded that we supply the maize as discussed at Capital Hotel with ADMARC officials.*
17. *I reiterated my earlier position that AZIT could not supply the maize without a contract and that all we required was a signed contract for us to supply the maize.*
18. *Dr. Ntaba threatened me, in the presence of the Board members, that if we failed to supply the maize our company would be closed and I could face unspecified action. The meeting ended on that note.*
19. *On 15th January 2020, we had another meeting with Dr. Ntaba, at Dr. Ntaba's instance, with the full AZIT Board at Dr. Ntaba's office in Kang'ombe Building, where Dr. Ntaba told the AZIT Board that the State President had sent him to press on the Board the need for AZIT to supply maize to ADMARC on the terms previously discussed at Capital Hotel with ADMARC officials.*
20. *Later, on 20th January 2020, the Claimant called me and told me to meet him and I went to his Area 12 residence with Chifundo Chibwana, AZIT Marketing Officer, and we held a meeting with Dr. Ntaba also in attendance.*
21. *At that meeting the Claimant insisted that AZIT should supply the maize as discussed at the Capital Hotel meeting or we would face unspecified action.*
22. *I reluctantly agreed to supply the maize but raised the issue of transportation costs which AZIT could not shoulder at the time and the Claimant told us to borrow money, if need be, as the same would be refunded upon delivery of the maize.*
23. *We borrowed the money and mobilised the transportation of 1980 tonnes of maize on 66 trucks.*
24. *On 23rd January, when we started transportation of the maize to Blantyre, I received a call from ADMARC's Company Secretary informing me that we should not deliver the maize to ADMARC as our arrangement had been cancelled.*
25. *I immediately called the Claimant who informed me that he would speak to ADMARC's Company Secretary and get back to me.*
26. *Considering the extent of our investment in this business, on my part I continued to speak to ADMARC's Company Secretary, Mr. James Kaphale to consider reversing the decision for AZIT not to supply maize to ADMARC as earlier agreed.*
27. *On 24th January 2020, being confused and frustrated I called the said Mr. James Kaphale several times and he demanded that if we wanted the agreement for the supply of maize to ADMARC to continue, I should give him MK5, 000, 000.00 (Five Million Kwacha).*

28. *I told the said James Kaphale that I did not have such an amount at that material time and suggested a face to face meeting at our Area 14 offices in order to discuss this issue further.*
29. *Mr. James Kaphale demanded that I should send him MK100, 000.00 (One Hundred Thousand Kwacha) for fuel so that he should travel to Lilongwe from Blantyre for the said meeting and I did send the said amount through Airtelmoney directly to his cell number.*
30. *We held our meeting on 26th January 2020 and at that meeting he insisted on the MK5, 000, 000.00 payment as a prerequisite to continuation of the agreement for the delivery of the maize.*
31. *On his part, the Claimant did not get back to me until about a week later when I went to his residence to meet him face to face and he assured me that he was looking into the matter.*
32. *The Claimant has done nothing on the matter to this date.*

LOAN TO HON. EVERTON CHIMULIRENJI

33. *In or around mid-December 2019, whilst we were already discussing the issue of supplying maize as stated above, the Claimant called me using Whatsapp call asking me if I could lend him MK70, 000, 000.00 (Seventy Million Kwacha).*
34. *In response to the request for a loan by the Claimant I told him that I could manage only MK60, 000, 000.00 (Sixty Million Kwacha).*
35. *About 5 days later I arranged the money requested by the Claimant and gave it to him in Blantyre at the Innovations Awards ceremony which was held on or around 21st December 2019 in the evening at Sanjika Palace.*
36. *I had earlier, in the afternoon, called the Claimant, on Whatsapp, to inform him that I had the money he wished to borrow and he told me to give it to him in Blantyre at the Innovations Awards ceremony which we were both scheduled to attend.*
37. *He informed me that when he arrives at the ceremony, after parking and alighting from his motor vehicle, a driver of one car on his convoy would not switch off the engine and would keep the headlamps on and I was to give the money to that driver.*
38. *When I arrived at the venue of the Innovations Awards I was not able to park my motor vehicle close to the podium but I determined that Dick Shumba's motor vehicle was close to the podium.*
39. *I requested him to allow me to keep a large suitcase containing money in his car so that it would be easy to take it to the Claimant's motor vehicle when he arrived.*

40. *I took the suitcase from my car in the company of Henry Likhaya Mbewe and Weston Khan to Dick Shumba's car and the said Weston Khan and Henry Likhaya Mbewe counted the money to ascertain the amount that I was leaving in Dick Shumba's car.*
41. *When the Claimant arrived, everything happened as he had earlier said and Dick Shumba and Weston Khan took the money to the idling motor vehicle with its lights on on the Claimant's parked convoy.*
42. *The Claimant later confirmed that he had received the money and thanked me as we were dancing on the dance floor.*
43. *On 5th January 2020, the Claimant called me again on whatsapp and requested for a further MK40, 000, 000.00 (Forty Million) loan.*
44. *Shortly after that call I met the Claimant at his residence on the issue of the money.*
45. *On or around 10th January 2020 I gave him the said MK40, 000, 000.00 at his residence and I was in the company of Chifundo Chibwana when I gave him the money and Chifundo Chibwana wanted to count the money but the Claimant refused, saying that he trusted me.*
46. *At the end of January 2020, I, in the company of my wife, we met the Claimant at his Ntcheu residence as he was on his way to Blantyre and discussed the repayment of the loan and he assured me that he would pay back without specifying dates.*
47. *Sometime in February 2020, when the Claimant could not pay back the money, I reported the matter to Central Region Police Headquarters, specifically Mr. Paul Chipole, who assured me that they would contact the Claimant on my behalf.*
48. *In around late February or early March the people I owed money which I lent the Claimant complained to Fiscal Police who summoned me and arrested me.*
49. *In order to secure my release from police custody, I handed over my seven motor vehicles to the creditors who had lodged a complaint at Fiscal Police.*
50. *In or around June 2020 at a DPP/UDF rally at Masintha ground, I asked the Claimant about my money in the presence of many people and I recognised Mr. Saidi Juma amongst the spectators.*
51. *In or around the same month of June 2020 at a DPP/UDF rally at Biwi Triangle I also asked the Claimant about my money in the presence of many people and I also recognised Mr. Ndungama Kaipa among the spectators.*
52. *The Claimant has failed to pay back the said money to this day.*

OPPOSITION TO THE PRESENT APPLICATION

53. *I have been following up with the Claimant on two issues, namely; 1) the MK100, 000, 000.00 loan obtained by him and 2) the money I lost on hiring trucks to transport maize to ADMARC in Blantyre.*
54. *I have been in regular communication with the Claimant about the two issues but the Claimant has not shown any commitment to pay back the money he borrowed and to make good my loss as stated above.*
55. *On 11th August 2020 I went to the Claimant's Chinsapo residence to meet him on the above stated issues as he persistently failed to pick up my calls for us to discuss the same.*
56. *On that day the Claimant told me to come again on Friday 14th August to collect the money or if he fails to pay me I would be at liberty to take any property from him and he would also hand over title over his residential property to me.*
57. *On Friday 14th August I indeed sent my colleagues to his house to collect the money on my behalf as agreed and, failing the payment, to collect any items of property, also as agreed.*
58. *I was at the Claimant's residential premises on 11th August and my colleagues on 14th August with the permission and on the agreement of the Claimant.*
59. *I never made any threats to the Claimant as alleged by him and state that any communication or any contact with him was made in the context of the facts stated above.*
60. *I am a law-abiding citizen and have never set foot on any of the Claimant's residential properties without his consent.*
61. *The application for an injunction by the Claimant is ill-founded as I would never insist on going to the Claimant's home without his consent and I would not require a court order to respect the Claimant's privacy."*

The Claimant filed with the Court a sworn statement in reply to the sworn statement in opposition. The material part of the sworn statement in reply states as follows:

"On meeting to inspect the Warehouse

3. ***THAT*** *I refer to paragraphs 3 to 33 of the Sworn Statement in opposition and aver that:-*
 - 3.1 *That I deny scheduling any meetings with the Defendant with the view of instructing the Defendant to supply maize grain to the Ministry responsible for Disaster Management, ADMARC or any other institution.*

- 3.2 *That the Defendant is well aware that if he needed to supply any Maize to any of the above mentioned government institutions he ought to have followed all procurement procedures and not otherwise.*
- 3.3 *THAT I have neither been privy to nor participated any meetings between the Defendant and the said Dr. Mtaba, Ramsey Mbewe and Robert Kaluwa, Mr. Felix Jumbe and James Kaphale as alleged by the Defendant.*
- 3.4 *THAT it is clearly coming out from the sworn Statement in opposition that, if any contract existed, which is contested, the Contract was frustrated as a result of the conduct of the officers from the ADMARC and I am surprised why the Defendant has not taken a legal action against the said ADMARC for breach of contract and is busy with my properties when it is clear that I was never privy to their discussions.*
- 3.5 *THAT I maintain my earlier stand that I have never instructed the Defendant to supply Maize grain to ADMARC or to any other Government agencies and I have never promised him that he will secure the contract from Government agencies.*

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4. *THAT I refer to paragraph 34 to 53 of the Sworn Statement in opposition and aver that:*
- 4.1 *That I have never borrowed any money from the Defendant as alleged by him and the fact that the Defendant have failed to produce any documentary evidence to support his allegation and the sums amounting to 100,000,000.000 is a clear indication that the Defendant is either lying or is suffering under dilutions. This huge sum of money cannot be borrowed without legal documentation.*
- 4.2 *That I am surprised that the Defendant initially claimed that the sum of MK 100,000,000 through his lawyer's letter referred as "Exhibit EC1" as the loss incurred as result of his failure to supply the Maize grain to ADMARC and now he is talking of loan which I borrowed him, this is a clear indication that he is lying.*
- 4.3. *That the manner in which the Defendant is changing stories leave a lot to be desired as at first his claim was different from what he is claiming at the moment through his sworn statement.*
- 4.4 *That accordingly, it is not true that I gave consent to the Defendant to come and collect my properties at home.*
- 4.5 *That the Defendant's agents popularly known as bouncers have been threatening both my families and myself and I have been living in fear as if I am not a Malawian."*

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.

For the Claimant, Counsel Taulo submitted that the requirements of Order 10, r.27, of CPR have been satisfied. The material part of the Claimant's Skeleton Arguments provide thus:

“4. **THE LAW APPLICABLE**

THE CONSTITUTION

1. ***Right to property***

Section 28 of the constitution

Entitles every person to acquire property alone in association with others and also protects the person who has acquired such property from being arbitrarily deprived of the same. Section 28 in full read:

- 1) *Every person shall be able to acquire property alone or in association with others.*
- 2) *No person shall be arbitrarily deprived of property.*

COURTS (HIGH COURT) (CIVIL PROCEDURE) RULES, 2017

4.5 *Order 10 rule 1- provide that;*

...

Order 10 rule 8 provide that;

...

4.7 *Order 10 Rule 27 ...*

CASE LAW OR COMMON LAW

1.1 *The case of **American Cyanamid Co. v Ethicon Ltd** [1975] 2 WLR 316 is the leading authority on the principles and guidelines applicable in applications for interlocutory injunctions. The important dicta in that case was summarized by Tembo, J., in the case of **Ian Kanyuka v Thom Chiumia & Others** Civil Cause No. 58 of 2003, where he said:*

***“The usual purpose of an interlocutory injunction is to preserve the status quo until the rights of the parties have been determined in the action. The injunction will almost always be negative in form, thus, to restrain the defendant from doing some act. The principles to be applied in applications for interlocutory injunction have been authoritatively explained by Lord Diplock in **American Cyanamid Co. v Ethicon**. The plaintiff must establish that he has a good arguable claim to the right he seeks to protect.*”**

The court must not attempt to decide the claim on the affidavits; it is enough if the plaintiff shows that there is a serious question to be tried. If the plaintiff satisfies these tests, the grant or refusal of an injunction is a matter for the court's discretion on a balance of convenience. Thus, the court ought to consider whether damages would be a sufficient remedy if the wrongdoer is unlikely to be able to pay them. Besides, damages may not be a sufficient remedy if the wrong in question is irreparable or is outside the scope of pecuniary compensation or if the damages would be difficult to assess. It will generally be material for the court to consider whether more harm will be done by granting or refusing to grant an injunction. In particular, it will usually be wiser to delay a new activity rather than to risk damaging one that is already established."

1.2 *The court must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried. The Claimant's life and that of his family is in danger by the reason of the conduct of the Defendants and their agent. Hence there is serious question to be tried as their agent. Hence there is a serious question to be tried as whether the conduct of the Defendants amount to trespass to goods and person which ought to be stopped.*

1.3 *So unless the material available to the court at hearing of the application for an interlocutory injunction fails to disclose that the plaintiff had any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that sought. Per Lord Diplock in American Cyanamide case. See also Gwanda Chakuamba v Tembo, Civil Cause No. 2509 of 2001 (Principal Registry) where Justice Mwaungulu acknowledge the need for an applicant to establish a "triable issue" in 'an application for an interlocutory injunction. The Judge made the following remarks: -*

"In American Cyanamid Co. v Ethicon Limited, "the House of Lords, overruling earlier decisions requiring the applicant to raise a prima facie case, opted for the applicant to raise a triable issue. The action must not be frivolous and vexatious and must have some prospect of success. Re Cable (1975) 1 WLR 37 and Smith v ILEA (1978) 1 ALLER 411 confirm this. The object of an interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were to resolved in his favour at the trial: but the plaintiff's needs for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial".

1.4 *This claim is concerning the right to life and property of the Claimant which is danger due to the conduct of the Defendant and his agent. Therefore, the issue of damages is out of the question in relation to applications for injunctions in relation to land. See section 21 of the Constitution of Republic of Malawi.*

- 1.5 *In determining where the balance of convenience lies and where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo. See Mtukula v Kumbukani and others, Land Case No. 58 of 2013 (principal Registry) Unreported.*
- 1.6 *The applicant in this case has got a beneficial interest in the question under the constitution. The acts of the Defendant in unlawfully sending agents to threaten the life of the Claimant and that of his family is not only illegal but also amount to criminal trespass as well as violation of applicant's right to life. The same applies to the Defendant's conduct of unlawful instructing his agents to forcibly trespass on the Claimant's residential and business premises."*

On the other hand, Counsel Kam'mayani, appearing on behalf of the Defendant, argued that the circumstances in this case do not call for the grant of an interlocutory injunction. He argued that the sworn statement of the Defendant shows that the visit to the Claimant's house was with the Claimant's licence and consent in that the Defendant went there to collect money from the Claimant. Counsel Kam'mayani further argued that a claim that one owes somebody money does not amount to defamation.

Having carefully read the sworn statements and the submissions by Counsel, it is the considered view of this Court that the application has to be denied. The application is being sought in support of the main case. As already mentioned herein, the reliefs being claimed in the main case are (a) general damages for defamation and trespass, (b) permanent injunction restraining the Defendant or anyone from visiting the Claimant's premises or interfering with the Claimant's goods in anyway, (c) permanent injunction restraining the Defendant from issuing any form of threats to the Claimant and (d) costs of the action.

Upon examining the reliefs being sought, it is clear that an award of monetary compensation would be an adequate remedy in respect of the claim for general damages for defamation and trespass. Further, it is trite that in the exercise of its equitable discretion, the Court will refuse to grant an interlocutory injunction if the interlocutory injunction effectively gives the claimant the full right sought in the main case: see **Chirwa v. Kaunda t/a Chika Building Contractors [1993] 16(2) MLR 502**. This is precisely what would obtain in the present case if the Court were to grant an interlocutory injunction restraining (a) the Defendant or anyone from visiting the Claimant's premises or interfering with the Claimant's goods in anyway and (b) the Defendant from issuing any form of threats to the Claimant.

In view of the foregoing and by reason thereof, the application is dismissed with costs.

Pronounced in Chambers this 1st day of September 2020 at Lilongwe in the Republic of Malawi.



Kenyatta Nyirenda
JUDGE