



IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

CIVIL DIVISION

JUDICIAL REVIEW CAUSE NO 32 OF 2021

BETWEEN

THE STATE (ON APPLICATION OF

PRINCE MPATA.....1ST CLAIMANT

MEJA FRED.....2ND CLAIMANT

ADZIWA CHIPATSO.....3RD CLAIMANT

MAJAWA MAKOLOJE.....4TH CLAIMANT

SYMON KAMPHEPO.....5TH CLAIMANT

MOSES MCHENJE.....6TH CLAIMANT

PHILLIP BANDA.....7TH CLAIMANT

PHILLIP BANDA.....8TH CLAIMANT

AND

LILONGWE CITY COUNCIL.....DEFENDANT

CORUM: HONOURABLE JUSTICE R.M CHINANGWA

James Counsel for the Claimants

Msukwa Counsel for the Respondents

Chitao Court Clerk

**RULING ON APPLICATION FOR AN ORDER OF INTERLOCUTORY
INJUNCTION**

1. Introduction

The claimants sought leave for judicial review and an interlocutory injunction. The leave for judicial review was granted without notice. The application for an injunction was heard inter partes and is the subject of this ruling.

The applicants seek an order of injunction restraining the defendant's from continuing to ban the operation of motorcycle taxis in the city of Lilongwe and further restraining them from seizing the claimants' motorcycles until the final determination of the matter. In support of the application is a sworn statement. It is argued that the defendant's issued a notice on 30th April 2021 which stopped all motorcycle taxi operators in the city of Lilongwe from doing their business. Efforts to resolve the matter proved futile. On 8th June 2021 authorities impounded all motorcycles on all main roads in the city. It is argued that the defendants have collected parking fees without informing the claimants that they were breaking a law and that the defendants ban is indiscriminate as it includes all motorcycles which have a valid registration.

In response the defendants oppose the application. In their sworn statement it is argued that the defendant has received outcries from the general public on the proliferation of motorcycles and bicycles taxis about their unpleasant operational conduct which causes a nuisance and present danger and even accidents to other road users. On 4th December 2020 a resolution was made by the defendant to regulate of motorcycle taxi in accordance with its by-laws in order to provide a conducive environment for all road users and business people in the city of Lilongwe.

2. Issue for Determination

This court has to determine whether or not to grant an interlocutory injunction.

3. Analysis of Law and Evidence

In an application for an injunction the court may grant an injunction where it appears to the court that a) the applicant has a serious question to be tried b) damages may not be an adequate remedy c) it shall be just to do: **Order 10 rule 27 Courts (High Court) (Civil Procedure) Rules 2017**. In **King Flower Ltd v Lingadzi Farm Ltd [1996] MLR 93 (HC)** it was held that a serious question to be tried is one where there is a good arguable claim. In this case there is a good an arguable claim having in mind that the applicants do have the right to engage in

economic activity. However, this right not being absolute, this court has to determine whether the limitation imposed by the defendants meets the requirements of section 44 of the Constitution that is, is the limitation lawful; reasonable and necessary in an open and democratic society? On this score a serious question to be tried has been raised. On the second part, as to whether damages would be an adequate remedy, the courts have generally held that where damages would suffice an injunction should not be granted. However, the Supreme Court qualified this general application of the law in **Malawi Savings Bank v. Sabreta Enterprises Limited**, MSCA Civil Appeal No. 44 of 2015 (unreported) by stating that:

"On the matter of adequacy of damages, we think each case must be considered on its own facts. There is nothing like one principle fits all scenarios. We think it is a little simplistic not to grant an injunction against an appellant just because it has deeper pockets. Just because it can afford to pay damages in case the injunction was erroneously granted. There will be instances, and we have a feeling this could be one of them, where damages will never suffice the fact that they can be afforded notwithstanding. This case does not, in our judgment, seem to be about damages." — Emphasis by underlining supplied

This court agrees with the above position. The ability to pay damages should not be the principal consideration. A wholistic approach to the whole matter having in mind the issues before the court is pertinent. In this regard it is this courts view that this matter is really not about the ability to pay damages or not, which for arguments sake would be quantifiable being a transport business and payable the respondents being a government entity. The matter at hand is about bringing sanity how the claimants right to economic activity can be lawfully limited to bring sanity in their operations within the city. To this end, much as some motorcycle operators are licensed, the matter is about how to regulate the plying of the trade within the cities. Just as market have designated places of operation, the question is should there be rules to govern the motorcycle transport business. This draws the court to the third aspect the court is called to consider: would it be just to grant or deny the injunction? It is noted from the facts before the court that the claimants have not been stopped outrightly from plying their trade. They have been advised to operate the motorcycle business in specific places. This court appreciates the sentiments of the respondents that the motorcycle transport business has heavily proliferated the city causing a concern to other road users. Granting the injunction would be unjust in the whole scheme of the matter having in mind other road users and operations in the

city. To this end this court is of the view that the injunction should not be granted, till determination of the substantive matter.

4. Finding

The application for an interlocutory injunction is dismissed.

Pronounced this 24 August 2021 at LILONGWE



R.M CHIANNNGWA

JUDGE