



**REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
MZUZU DISTRICT REGISTRY
CIVIL DIVISION
CIVIL CAUSE NO. 255 OF 2019
BEFORE HONOURABLE JUSTICE KONDOWE
BETWEEN**

ADDISON KASHELEKA MTEGHA CLAIMANT

- AND -

**SHADWICK MPONERA (VILLAGE HEADMAN MATAMBUKILA)
& ANOTHER.....DEFENDANTS**

**CORAM: THE HONOURABLE JUSTICE MAUREEN KONDOWE
HONOURABLE YUSUF WITNESS NTHENDA, MP, COUNSEL FOR THE CLAIMANT
DEFENDANTS, ABSENT
MR. M.B. MANDA, OFFICIAL INTERPRETER**

ORDER

1. BACKGROUND TO THIS APPLICATION

1.1. The Claimant filed an interpartes summons for an order of interlocutory injunction dated 22nd June, 2020. Through this summons he sought the following orders;

- a) *An order to restrain the Defendants either by themselves, their servants, agents and/or otherwise from constructing and/or completing the construction of a bridge on the Claimant's leasehold land situate at Matambukila Village in the area of Traditional Authority Wasambo in Karonga District;*
- b) *An order to restrain the Defendants either by themselves, their servants, agents and/or otherwise from constructing and/or completing the construction of a road across the*

Claimant's leasehold land situate at Matambukila Village in the area of Traditional Authority Wasambo in Karonga District;

- c) An order to restrain the Defendants by themselves, their servants, agents and/or otherwise from holding themselves out as the owners of the land situate at Matambukila Village in the area of Traditional Authority Wasambo in Karonga District;*
- d) An order to restrain the Defendants either by themselves, their servants, agents and/or otherwise from trespassing onto the Claimant's leasehold land as particularized above;*
- e) An order to restrain the Defendants by themselves, their servants, agents and/or otherwise from infringing the Claimant's right to property and quiet enjoyment of this land.*

- 1.1 There is no prayer in the application for an order of costs. In his oral submissions, Counsel for the Claimant prayed for costs of this application.
- 1.2 This application is supported by a sworn statement dated 8th May, 2020 allegedly deponed by the Claimant himself.
- 1.3 There are no skeleton arguments that the Claimant filed in support of this application. No oral arguments of law were made by Counsel for the Claimant during the hearing of this application.
- 1.4 The Claimant also filed a supplementary sworn statement in support of this application dated 6th November, 2020.
- 1.5 The file of the court shows that the hearing of this interpartes summons for an order of interlocutory injunction was adjourned on 15th July 2020. On this occasion Counsel for the Claimant notified the court that the Defendants had just appointed John Tennyson and Associates as their Legal Practitioners. John Tennyson and Associates never filed its notice of appointment as the Legal Practitioners for the Defendants.
- 1.6 The Claimant took out a notice of adjournment dated 6th November, 2020. Through this notice the adjourned application for an order of interlocutory injunction was scheduled for hearing on 15th February, 2021. The hearing scheduled for this day collapsed. The Claimant had not been able to serve the notice of adjournment on the Defendants. Counsel for the Claimant had also not yet renewed his annual practising licence with the Malawi Law Society by this date. The hearing of this application was therefore specifically adjourned to the 4th of March, 2021.
- 1.7 During the hearing of this application it was clear that the notice of adjournment had been served on the Defendants. A sworn statement in support of this service is available on the court file. The court noted during the hearing that the Claimant had also filed a supplementary sworn

statement in support of his application. However, there was no evidence that this was served on the Defendants. For this reason, it was not accepted as the additional evidence that the Claimant could rely on in support of his application.

2 SUPPORTING SWORN STATEMENT ALLEGATIONS

The Claimant alleges the following:

- 2.1 That he occupied a piece of customary land that Village Headman Matambukila allocated to him in 1949;
- 2.2 That his son Titus Mtegha was asked to lease this land;
- 2.3 That his above named son allegedly divided this piece of land into two pieces. He allegedly registered one piece in his own name. The other piece was registered in the Claimant's name. It is this latter piece of land which was allegedly leased to the Claimant;
- 2.4 That upon the Claimant and his family discovering how his son the above- named Titus Mtegha had allegedly leased the land, there was a disagreement among them. This disagreement resulted into the commencement of **Civil Cause Number 1449 of 2015: Addison Kasheleka Mtegha v. Titus Mtegha and the Attorney General** in the Lilongwe District Registry of the High Court;
- 2.5 That the Claimant settled the lawsuit stated in paragraph 2.4 above out of court with the Defendants through a Consent Judgment dated the 3rd of October, 2016. The Claimant's son Titus Mtegha subsequently executed an assignment dated the 31st October, 2017 in his father's favour;
- 2.6 That around April 2019 the 1st Defendant announced that he would allow motor vehicles and motor cycles to pass through the land of the Claimant in front of his dwelling house;
- 2.7 That the Claimant allegedly questioned the 1st Defendant about this announcement. The Claimant did not want the motor vehicles and the motor cycles to pass through his land without his consent. Consequently, the Claimant resorted to erecting a barrier on the entrance to his dwelling house. He allegedly also simultaneously identified some alternative land within his land that could be used by the motor vehicles and the motor cycles.
- 2.8 That the Defendants were allegedly unhappy about what the Claimant did. They allegedly mobilized people who allegedly matched and demonstrated against him.
- 2.9 That the Defendants allegedly eventually summoned the Claimant to a meeting. The Claimant and his family were allegedly insulted at this meeting. The Defendants are alleged to have

instructed the other people they called to this meeting to demolish the barrier the Claimant had erected in front of his house. These people also allegedly destroyed the fruit trees of the Claimant. They also allegedly opened a water tap, sang and shouted.

2.10 That the Defendants are allegedly constructing a bridge at the entrance to the leasehold land of the Claimant where he erected a barrier;

2.11 That he has no problem with motor vehicles and motor cycles passing through his leasehold land. They must however, not pass near his house; and

2.12 That it is against this background that he believes that the actions of the Defendants have no legal basis. They are an alleged violation of the Claimant's right to property and its quiet enjoyment. The Defendants must therefore be restrained by an order of interlocutory injunction as particularized in the summons.

3 THE EVIDENCE

3.1 The sworn statement in support of this application has three exhibits to it. These comprise firstly, the Consent Judgment drawn up in the case the Claimant filed in the Lilongwe District Registry of the High Court against different defendants. Full particulars of this court case appear in paragraph 2.4 of this order. This exhibit is unmarked and incompletely commissioned. Secondly, there is the assignment dated the 31st day of October, 2017 whose full particulars are stated in paragraph 2.5 of this order. Thirdly, there are pictures which paragraph 19 of the sworn statement in support of this application alleges are for the bridge that is under construction on the Claimant's leasehold land.

4 THE LAW ON THE GRANT OF ORDERS OF INTERLOCUTORY INJUNCTION

4.1 Learned Counsel for the Claimant did not file any skeleton arguments. In terms of Order 20 rule 1 (1) of the Courts (High Court) (Civil Procedure) Rules, 2017 ("the 2017 Rules") it is mandatory for a party to file and serve skeleton arguments in all interlocutory applications at least two days before the scheduled date of the hearing of the application.

4.2 Order 10 Rule 27 of the 2017 Rules deals with applications for orders of interlocutory injunction. A court may grant an injunction by an interlocutory order in specific circumstances. These circumstances include where 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 is just to do so. A court can grant this order either unconditionally or on such terms and conditions as it considers just.

4.3 Order 10 Rule 1 of the 2017 Rules states that a party may apply during a proceeding for an interlocutory order of the court by filing an application in a proceeding in Form 4.

4.4 The question whether or not an order of interlocutory injunction should be granted has been dealt with by this court before. An application for an order of interlocutory injunction was dismissed in the case of **Joseph Thangalimodzi and 18 others v Roads Authority and Another Civil Cause No. 238 of 2018**. In this case the claimants sought the order of interlocutory injunction to stop the Defendant from constructing a road through their farmlands, and taking or destroying them without compensation. The application was dismissed because the court considered that there were no interests of justice that the interlocutory injunction would serve. The court was of the view that this case was about compensation for the loss of the land and not about stopping the construction of the road.

5 DETERMINATION OF THE CLAIMANT'S APPLICATION

5.1 There is one issue that this court needs to determine in this application. This is whether or not this court should grant the Claimant the order of interlocutory injunction he seeks from this court with costs.

5.2 Skeleton arguments dated the 28th August 2019 are available on the court file. They have no date stamp to confirm the date on which they got filed with this court. For this reason, this court is not required to determine other issues in this application.

5.3 This court declines to grant the Claimant the order of interlocutory injunction he seeks for the following reasons:

5.3.1 The Claimant filed an interpartes summons for this application. The legal basis or the authority of law on which this was done is not stated. The Claimant should have filed an application in a proceeding for an order of interlocutory injunction in compliance with Order 10 Rule 1 as read with Order 10 Rule 27 of the 2017 Rules using Form 4.

5.3.2 There is no serious question to be tried between the Claimant and the Defendants. The Claimant categorically states in paragraph 20 of his sworn statement in support of this application that he has no problem with people passing through his land. He acknowledges that these people would pass through the land in motor vehicles and motor cycles. The allegation that he makes about damage to his property through radiation owing to the noise

of these motor vehicles and motor cycles is not a matter that falls for determination in this application. It is a substantive matter that would require the Claimant to these allegations.

- 5.3.3 According to the documents available on the court file, the Claimant commenced Civil Cause No. 575 of 2019 in the High Court, Lilongwe District Registry between himself and the Defendants on 9th August 2019. In January 2020 the Claimant filed the case commencement documents comprising the summons, a list of documents and a sworn statement verifying the statement of case and the claimant's list of documents in this court. These documents were not signed and dated by the legal practitioners for the Claimant nor was the initial direction that was filed alongside these documents.
- 5.3.4 Strangely, a notice of mediation which this court issued on 19th March, 2019 was filed together with the documents the Claimant filed in this registry in January 2020. A statement of issues dated 9th December, 2017 was also filed with this registry on this occasion. A duplicate copy of this statement of issues shows that the date of 9th December 2017 was tampered with and changed to 9th December 2019.
- 5.3.5 There is no explanation on the court file for how this case got registered in this registry and why. There is also no order of its transfer from the Lilongwe District Registry to this registry.
- 5.3.6 The signature of the Claimant as it appears on the sworn statement in support of this application is different from that which he allegedly used on the Assignment dated the 31st October 2007 which has been exhibited and attached to the supporting sworn statement. This fact raises the doubt that the Claimant in the present application is the same person who was the claimant in Civil Cause No. 1449 of 2015 as highlighted in paragraph 2.4 of this order.
- 5.3.7 The matters quoted in paragraphs 5.3.3, 5.3.4, 5.3.5, and 5.3.6 above speak to the extent to which the process of this court was abused.
- 5.3.8 Given the above matters, the Claimant's application for an order of interlocutory injunction is dismissed. Section 30 of the Courts Act, Cap.3:02 of the Laws of Malawi states that costs of court proceedings are in the discretion of a court. Order 31 Rule 3 (1) (a) (b) and (c) of the 2017 Rules amplifies this issue. The Claimant is awarded no costs. He will bear his own costs of this application. It is so ordered.

6 THE CLAIMANT'S RIGHT OF APPEAL AGAINST THIS DECISION

6.1 This court confirms that the Claimant has a right to appeal against this decision. The Claimant is therefore at liberty to appeal against this decision before a single member of the Supreme Court of Appeal within 14 days from the date of delivery of this order in compliance with section 23 (1) (a) of the Supreme Court of Appeal Act Cap 3:01 of the Laws of Malawi. Section 21 of the Supreme Court of Appeal Act read together with paragraph (c) of the second proviso to this section is on this point.

Delivered at Mzuzu this 30th day of March 2021



M. KONDOWE

JUDGE