Mrs. D.F. Nawaungulu

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1318 OF 1992

BETWEEN:

D S JALAKASI (MALE).....1ST PLAINTIFF

- and -

PETRO GILBERT (MALE).....2ND PLAINTIFF

- and -

BAULENI (MALE).....3RD PLAINTIFF

- and -

BONSO ADAM (MALE).....DEFENDANT

CORAM: **MSOSA (MRS), J.**
Jumbe, of Counsel, for the Plaintiff
Banda, of Counsel for the Defendant
Kadyakale, Law Clerk

R U L I N G

This is an application to discharge an injunction, made under O.29 1(17).

The first plaintiff (hereinafter referred to as the plaintiff) brought an application for an interlocutory injunction against the defendant. The application was **ex-parte** and after hearing the arguments of learned Counsel, the Court granted the application, whereupon it was decreed as follows:

> "It is ordered and directed that the defendant by himself his servants or agents be restrained and an injunction is hereby granted:
>
> (1) restraining the defendant his servants agents or otherwise howsoever from erecting or continuing to erect any structures on the first plaintiff's land situate at and known as Kasabwe Farm at Nsenga Village, T/A Mponda, Mangochi District;
>
> (2) restraining the defendant by himself his servants or agents or otherwise howsoever from entering or otherwise trespassing upon the said land;

It is further ordered that -

(3) the defendant his servants or agents do forthwith vacate the said land;

(4) the defendant by himself his servants or agents do forthwith remove all his goods or articles of whatsover nature from the said land."

The defendant now applies to have the said injunction dissolved. The application is supported by an affidavit deposed to by the defendant's Counsel and a supplementary affidavit deposed to by the defendant himself. The affidavits, **inter alia**, state:-

"(a) That in or about March 1992, the defendant applied to lease 20 hectares of land in Mangochi where he could grow tobacco, and his application is still pending.

(b) That prior to the application, the defendant has been in occupation of the said land for several years.

(c) That in fact that land which the defendant occupies does not belong to the plaintiff because the plaintiff was given the land at Che Zimba in the same District.

(d) That the defendant has spent K40,000 on the land in question preparing it for tobacco growing.

(e) That the defendant has grown about 10 hectares of tobacco and that if the interlocutory injunction is not discharged, he will have lost all the crop which requires close attention and watering.

(f) That it would be unfair to punish the defendant by destroying his tobacco crop grown on the land to which he has a legitimate claim in that the same was given to him by the Village Headman Nsenga and Chief Mponda and he has documentary evidence to that effect.

(g) That the defendant has instructed his legal practitioner to file a defence to the plaintiff's claim and that he intends to adduce evidence to support his claim during the hearing."

It was submitted on behalf of the defendant that the defendant got the land in question from the Village Headman and has occupied it for several years. He applied for a Government lease in December 1991, but that no formal lease

has been granted yet. The defendant has spent K40,000 in cultivating the land. It was further submitted, on his behalf, that the plaintiff and the defendant are claiming ownership to the same piece of land and this is the issue to be resolved by the Court. The defendant, therefore, asks for the discharge of the interlocutory injunction which was granted to the plaintiff, until the issue is resolved by the Court.

The application is opposed. It was submitted on behalf of the plaintiff that the plaintiff was given a lease of 21 years by the Government and that in view of this, one cannot reasonably argue that there is a triable issue or that the defendant has a better claim to the said land which can enable him to have the injunction granted in this Court discharged. He has further submitted that the Defendant spent K40,000 on the land with full knowledge of the existing facts. The Court cannot, therefore, rely on that fact in order to discharge the interlocutory injunction.

I have carefully considered what was said for the plaintiff and for the defendant. I have also considered the affidavits which were filed in support of this application. The facts so far show that the plaintiff was granted a lease of 21 years by the Government with effect from 1st June, 1990. In September, 1992, a letter was written to the defendant by the plaintiff's legal practitioners requesting him to vacate the land and that in default legal proceedings would be instituted against him. Then on 22nd October, 1992, the present injunction was obtained. I think it is also important to mention that on 10th December, 1992, the defendant was ordered to pay a fine of K100 for contempt in committing a breach of the injunction granted against him in this matter. In addition to all this, the defendant has not yet entered any defence to the plaintiff's claim.

The conduct of the defendant clearly shows that he has no intention whatsoever to obey or respect the injunction granted against him. If he had obeyed the injunction, he would not have continued to cultivate the land. He is aware that the plaintiff is claiming that he has a good title to the land and he has produced some documents to prove the alleged ownership. I would say the defendant has not come to this Court with clean hands.

The application, for the reasons I have already given, must fail. The injunction must continue. It is, consequently, dismissed with costs.

DELIVERED in Chambers this 15th day of January, 1993, at Blantyre.

A S E Msosa (Mrs)
JUDGE