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IN THE HIGH OF MALAWI
CIVIL DIVISION
PRINCIPAL REGISTRY
CASE NUMBER 356 OF 2021

BETWEEN

FRANCIS STEVEN MPHEPO.....FIRST CLAIMANT

AND

ALEX MAKANJIRA.....SECOND CLAIMANT

AND

PETER MTWANA.....THIRD CLAIMANT

AND

GETRUDE MAMBELERA.....FIRST DEFENDANT

AND

MAGRET KUMWEMBE.....SECOND DEFENDANT

AND

DOMINGO MALUWA.....THIRD DEFENDANT

AND

HARLON CHOWE.....FOURTH DEFENDANT

AND

DICTON ZITHEYA.....FIFTH DEFENDANT

BEFORE Judge Jack N'riva (Contempt proceedings)

Mr Kunitengo of counsel for the claimant

Mr F. Maele of counsel for the defendants

Ms D. Nkangala, Court Clerk

JUDGMENT

This is an application for contempt of court proceedings. The claimants commenced an action in the Court of my brother judge Hon. Mandala Mambulasa J.

Together with the commencement of that action the claimants sought an interlocutory injunction against the defendants.

The Court granted the order without notice. The matter was set down for the application to hear the application with notice to the defendants. The defendants did not attend the hearing. The Court extended the order.

This application emanates from the allegation that the defendants have disobeyed that order of the Court.

During the hearing of this contempt of court proceedings counsel for the defendants applied, and the court allowed it, for him to cross-examine the deponents of the sworn statements of the contempt proceedings.

When the Court heard the cross-examination of the first claimant, a clear picture of what the defendants wanted to hear from the claimants emerged. This is that that the first claimant commenced the action as the owner of the land in question when he was not. The other claimants were the purported purchasers of the land. The interlocutory order required the defendants to stop occupying and using the land.

From defendants' sworn statements as well as the cross-examination, the synopsis of the history of dispute the is as follows: the premises in question belonged to the late Macneil Kamwendo. He was a member of Malawi Congress Party during the era of one-party state system. He fell into bad books with the party. Members of a group known as Malawi Young Pioneers confiscated the property from him. The property later ended up being under the control of a grouping known as Chitukuko cha Amayi Mmalawi.

The first claimant, a politician, assisted a Mr Francis Chalira to claim the land on behalf of the beneficiaries of the estate of Mc Neil Kamwendo (deceased). Mr Chalira and the first claimant ended up being the administrators of the deceased estate. In 2013, the first claimant introduced Mr Chalira to the first and second defendants as the one to whom the rentals should be paid. Since then, the said defendants have been paying rentals to Mr Chalira.

The first and second defendants argued that they were surprised that the first claimant was claiming the land yet he introduced Mr Chalira as the one to be receiving the rentals. At no point, they said, did the first claimant claimed to be owner of the land. Thus, they denied to be in contempt of Court. The other defendants (third, fourth and fifth) argued that they had no business nor occupied the premises under dispute.

Mr Francis Chalira also provided a sworn statement in support of the defendant opposing the application for contempt of court.

Suffice to say that issues also arose as to the propriety of the first claimant's becoming an administrator of the estate.

It is apparent that the defendants have issues with the way the first claimant is claiming the land. Indeed, from the cross-examination , issues arise as to whether the first claimant could claim the said land. Put narrowly, it was questionable whether the first claimant properly obtained the letters of administration in this matter. Reading through the sworn statements of the defendants it appears that the first claimant brought to the attention of some of the defendants that the owner of the land was Mr Francis Chalira. It is quite apparent that the defendants were against the defendant when actually they had been told about Mr Francis Chalira as the one who would be collecting rentals from them.

Question arose as to the propriety of the first defendant to become a co-administrator of the deceased estate. Thus, two questions arose: first, the

propriety of Mr Mphepo obtaining the letters of administration. Secondly, his claim in the matter.

Pausing here, I have to desist from determining the propriety of the claimants in commencing this action. The matter came to this Court on the issue of contempt of court. Without much ado, it is quite apparent that the defendants received an order of injunction in this matter. They were aware of the order of the injunction. Granted, the right of the claimants is questionable to obtain the injunction, let alone commence the action herein. That notwithstanding, the claimants had to comply with the order of the Court. If they had issues with the order, they had to apply to have the order discharged. Alternatively, they could challenge the order when the application was called for the hearing with notice to them. The fact that they had reservations to the claimants' claim did not mean that they had to disobey the Court order. Court orders are to be obeyed until and unless revoked. Thus Court orders have to be respected even if they are wrong unless discharged or set aside. Mkwandawire J, as he then was, said in *Kampanje Banda (Suing on his own behalf and on behalf of all members of District committees of the Malawi Congress Party that petitioned the Party President to call for an Extraordinary Annual Convention) v Gwanda Chakuamba* Civil Cause 1841 2001 that

the law is that a court order as long as it stands, must be obeyed. This was clearly stated in [*Hadkinson v Hadkinson* [1952] 285]. At page 288 Romer LJ had this to say:

"It is the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it ... A party who knows of an order, whether null and void regular or irregular, cannot be permitted to disobey it ... It would be most dangerous to hold that the suitors or their solicitors, could themselves judge whether an order was null and void."

The fundamental purpose of contempt jurisdiction of court is to uphold supremacy of rule of law and court's authority to administer it —

In the arguments, counsel for the defendants argued that there were some dubious transactions that happened with regard to the change of ownership in the plot. Counsel argued that the sworn statement of Francis Chalira showed that he was not aware that the land was transferred into the name of Mr Francis Mphepo and then sold to the second and third claimants. He said that he was surprised that the plot changed to Mr Francis Mphepo without his knowledge and consent. He said that the first and second defendants have all along been paying rentals to Mr Francis Chalira and they are staying on the plot on that account. He, therefore, argued that the claim by the first claimant was covered with fraud. He further said that it would only be fair that the Court should investigate the circumstances of the change of ownership first before the first and second defendants can be held to be in contempt of court, when the whole transaction of the sale was clearly dubious.

The further argument was that it was curious that Francis Chalira was neither a claimant nor a defendant in the matter. Therefore, the claimants claimed that they were not at all bringing the authority of the courts into disrepute. They, therefore, argued that the court should not find them in contempt of court.

The points raised are valid. However, that did not justify the defendants to disobey the Court order. I find the defendants to be in contempt of court.

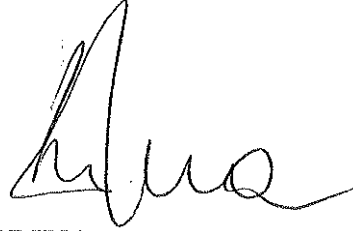
Mindful that at common law or even in criminal justice, under statute, one may be found guilty but not be convicted¹, I order make no order of conviction for the defendants. This is on the ground that the claimants' right is questionable to bring up the action. It would be inequitable to convict the defendants in the circumstances of the case.

¹ Section 337 of Criminal Procedure and Evidence Code

The defendant argued that they were desirous to apply for the discharge of the injunctive order. That issue should proceed in the Court that is handling the matter.

Costs shall be in the cause.

MADE the 30th day of June, 2022

A handwritten signature in black ink, appearing to read 'J N'RIVA', written in a cursive style.

J N'RIVA

JUDGE