



IN THE HIGH OF MALAWI
CIVIL DIVISION
PRINCIPAL REGISTRY
CASE NUMBER 227 OF 2021

BETWEEN
EUNICE JERE..... CLAIMANT
AND
UNITED PENTECOSTAL CHURCH.....DEFENDANT

BEFORE Judge Jack Nriva
Mr Kunitengo of counsel for the claimant
Mr W. Kajawo of counsel for the defendants
Ms D. Nkangala, Court Clerk

RULING

The claimant commenced this action and obtained an interlocutory injunction against the defendants to restrain and the first defendant from carrying out activities at a piece of land in Ndirande NW/109/N848; to restrict second respondents from allocating the said piece of land for the applicant and quashing the decision of the second respondent allocating the said piece of land to the respondent.

In her sworn statement, the claimant said she was born in 1960.

Her parents settled in the area for 41 years and they enjoyed peaceful possession of the land until her parents' death in 2012. She took over possession of the said plot. In 2012, she applied from the second respondent to be allocated the said piece of land. She said she was told that she could not get the allocation because Electricity Supply Corporation of Malawi lines passed through the place.

She said that in 2015 she noticed that the electric lines were removed and she immediately reapplied for the land. She made several calls following up on the status of her application and there was no response. She said that assuming that her application might have gone missing, she reapplied in 2018.

In 2019 representatives of the first respondent came to her house and told her that they had bought the land from the second respondent. She said that they told her that the second respondent sent them to inquire from her on the possible compensation she needed. She said she told them to leave because they did not bring evidence to support their assertions that they had been sent by the second respondent. She said she suspected sinister under-dealings. She said that in one of the meetings with the second respondent she suggested that in the event that the second respondent intended the land to be used for other purposes other than housing settlement, she must be allocated another block elsewhere. Thereafter, there were several letters and meetings between the claimant and the defendants.

There is an application by the defendants to discharge the order of injunction. The application is supported by a sworn statement filed by Wayne Kajawo, counsel for the first defendant. Basically, the statement states that the first respondent made an application for acquisition of the land in question and made payments for it. The statement further stated that second respondent provided the first respondent with site and area plans. The first respondent mobilised resources and started developing the land only to be stopped by the claimant. Counsel, therefore, argued that the claimant did not show a serious question to be tried- which is the first element the Court looks at in granting an interlocutory injunction.

Counsel argued that the claimant had no claim to enforce arguing that the claimant claimed that her claim was based on long stay yet she was not allocated the land. Counsel for the claimant opposes the application for discharge of the

injunction. Counsel argued that the submissions counsel was making were fit for the actual disposal of the dispute, not at this point of interlocutory application.

The interlocutory injunction that the claimant sought in this matter was aimed at (a) restraining the first respondent from carrying out construction activities on the land

(b) to restrict second respondents from allocating the said piece of land to the first respondent

(c) quashing the decision of the second respondent allocating the said piece of land to the first respondent

I will start with the issue of ownership of land.

The claimant's claim to the land is based on his parents continued use of the land and her later act in applying for ownership of the said piece of land.

The first defendant's opposition to the application is based on the fact that the second defendant allocated to them the said piece of land. In short, the claimant's claim to the land is merely on her claim of having occupied the land and the correspondence that she has had with the respondent claiming the piece of land. Furthermore, she is claiming that in the alternative the second defendant should provide the claimant an alternative piece of land.

At this juncture the court does not deal with the evidentiary issues to a very great extent. What matters is primarily for the claimant to establish that he or she has a serious question to be determined.

Looking at the claimant's sworn statement, and listening to the arguments it is quite difficult to discern if the claimant has a triable issue. She claims the land on the basis of her parent's occupation on the land. Little does she show whether the parents owned the land and eventually passed it on to her. One would ask why she applied to have the land if she had title to the land. I believe, it is hard to

ascertain the claimant's claim to the land. Whilst the claimant merely made an application to the second defendant, the first defendant received positive response from the second defendant. Thus, apparently, the first defendant has a better chance of claim than the claimant. It appears that the claimant would want the Court to make the order in her favour based merely on expectation.

She hardly has a serious question to be tried. Having so found, it is unnecessary to consider adequacy of damages and the balance of justice. Obviously, balance of justice cannot lie in favour of the claimant.

More to that, the second third limbs of the claimant's application is to effectively order the second defendant to allocate the piece of land in dispute to her, in a way. First, that is an order of a mandatory injunction, though not put in that fashion directly. Purposively, the claimant would want the order to be for the second respondent to reverse the allocation to the first respondent to her. Secondly, especially, the third limb is tantamount to disposing the action at this interlocutory stage. The claimant is seeking an order at this interlocutory stage quashing the second defendant's decision.

Talking of mandatory injunctions, it is a common legal principle that an interim mandatory injunction ought not to be granted except in very exceptional circumstances: *Fessenden v Higgs and Hill Ltd* [1935] ALL ER 435 and *Redland Bricks v Morris* [1969] 2 ALL ER 576. It is said that since an interim mandatory injunction is likely to carry a greater risk of injustice if it turns out to have been wrongly made than an order which merely prohibits, such an injunction has only to be granted in cases which are unusually strong and clear. In this matter, I find no reason to proceed with the orders the claimant sought.

As to the quashing the decision, that does not appear like an interlocutory order.

In *Siskina (Owners of Cargo lately on Board) v Distos Companie Naviera SA (the Siskina)* [1979] AC 210, [1979] 3 WLR 818 that:

“A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action.”

In summary, the claimant does not appear to have a serious issue to be tried. She seems to seek a mandatory interlocutory injunction and she seems to seek a final order at this interlocutory stage, of which her claim has not been established. The interlocutory injunction is, therefore, discharged with costs.

MADE the 1st day of July, 2022

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

J NRIVA

JUDGE