

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1510 OF 1992



BETWEEN:

MOBIL OIL (MALAWI) LIMITED.....PLAINTIFF

- and -

LEONARD MUTSINZE.....DEFENDANT

CORAM: CHATSIKA, J.

Mbendera, of Counsel, for the Plaintiff  
Chagwamnjira, of Counsel, for the Defendant  
Kaundama, Official Court Interpreter

R U L I N G

In this application, the Plaintiff seeks an interim injunction restraining the Defendant, whether by himself, his servants or agents, his wife or any other member of his family or whomsoever from remaining in or upon the premises known as KS/342, Nkolokosa, Blantyre until after the trial of the action which is pending herein.

The application is supported by an affidavit sworn by Counsel for the Applicant (the Plaintiff). That affidavit commences by stating that the Plaintiff has commenced proceedings against the Defendant seeking, *inter alia*, possession of a piece of land and the structure thereon, more particularly described as Plot No. KS/342, Nkolokosa in the City of Blantyre. The Plaintiff also seeks an order for an interim injunction restraining the Defendant, his servants or agents, his wife or any member of his family or whomsoever from remaining in or upon the said property. It is stated in the affidavit that by a letter dated 30th July 1992, written by the Defendant to the Plaintiff which was exhibited and attached to the Plaintiff's affidavit and marked "M2", the Defendant gave notice of his intention to resign from the Plaintiff's employment. By a letter dated the 6th August 1992, written by the Plaintiff to the Defendant, which is exhibited and marked "M3", the resignation was accepted. In the same letter, and apparently in reply to a suggestion made in the Defendant's letter regarding the house in which he was living, which house is the subject matter of this application, the Plaintiff made it clear that it would not release the house to the Defendant, as the house was required for the Plaintiff's use.

In another letter written by the Plaintiff to the Defendant, dated 7th September 1992 and exhibited and marked "M4", the Defendant was given notice to move out of the house by the 15th October 1992.



On the 22nd October 1992, when it came to the attention of the Plaintiff that the Defendant was still living in the house, the Plaintiff wrote another letter, which is exhibited and marked "M5", reminding him that he was expected to vacate the house on the 15th October and asking him to vacate the house immediately.

On the 23rd October 1992, the Defendant wrote exhibit "M7", in which he stated that he was looking for a house and that the housing authorities had promised him that one would be found in three months' time. He indicated by implication that he would vacate the house as soon as he found alternative accommodation, but not later than three months from the 23rd October 1992

Before the Plaintiff considered the Defendant's request and, indeed, before it acknowledged receipt of the letter, the Defendant referred the matter to his lawyers who, on the 30th October 1992, wrote exhibit "M9", alleging that the Plaintiff was in breach of certain contracts entered into between the Plaintiff on the one hand and the Defendant on the other. It was contended in that letter that the Defendant did not resign from the Plaintiff's employment of his own volition, but that he was asked to do so on consideration that if he agreed to resign, the Plaintiff would allocate him a fuel filling station which he would operate. It was alleged that the Defendant had performed his part of the contract by resigning, but that the Plaintiff had failed to perform its part of the contract, as it did not allocate the Defendant a fuel filling station. The letter further alleged that at the time of his resignation, the Defendant was told that he would be given contract work on month-to-month basis and that the contract work which had been offered was wrongfully terminated. The letter ended by demanding the specific performance of those contracts.

In another letter dated 1st November 1992, written by the defendant's lawyers to the Plaintiff, which is exhibited and marked "M10", it was stated that since the Plaintiff had failed to honour its side of the alleged contract, the Defendant would not vacate the house, since "he was relying on the same for his income".

In another letter, exhibit "M11", dated the 4th November 1992, from the Defendant's lawyers to the Plaintiff, the Defendant gave notice of his intention to commence proceedings against the Plaintiff for Defamation and Breach of Tenancy Agreement. It was alleged in the letter that on the 2nd November 1992, the Plaintiff sent its driver to go and evict the Defendant from the house in Nkolokosa and that this action lowered him in the estimation of right-thinking members of the public generally and that the action was in breach of his tenancy agreement in respect of the house.

Following this array of letters from the Defendant's lawyers, the Plaintiff, on the 15th December 1992 issued a writ against the Defendant and claimed possession of the house in Nkolokosa Township and also claimed mesne profits. The writ was served on the Defendant's lawyers on the 16th December 1992. On the 19th January 1993, the Plaintiff obtained judgement in default of a defence. On the 17th February 1993, by reason of an application made by the Defendant, the judgement was set aside and the Defendant was granted leave to file his defence. These matters were eventually followed by the present application for an injunction.

The principles upon which an application for an injunction will be considered are set out in Order 29/1/2 and 29/1/3 of the Rules of the Supreme Court and were succinctly elucidated in the case of **American Cyanamid Co. - v- Ethicon Ltd (1975) AC 396**. Before an injunction can be granted, it must be established that the applicant has a good claim to the right he seeks to protect. The court does not decide the claim on the evidence contained in the affidavits. A good claim is said to have been established if the applicant shows that there is a serious point to be decided. When these principles have been established, the court exercises its discretion on the balance of convenience. In deciding the question of the balance of convenience the court will consider whether damages will be a sufficient remedy for the mischief which is complained of and even if it considers that damages will be a sufficient remedy, it must further consider and decide whether the defendant or wrongdoer shall be able to pay such damages.

In his argument in support of the application which by and large emphasised what he had already stated in his affidavit, Mr Mbendera, for the Plaintiff, stated that the house on Plot No. KS/342 was leased to the Plaintiff by the Malawi Housing Corporation. The rent for the house is paid by the Plaintiff to the Malawi Housing Corporation. The house, which I understood to be among a number of houses leased by the Plaintiff from the Malawi Housing Corporation, was leased specifically for the use of the Plaintiff's employees. This house was allocated to the Defendant in his capacity as an employee of the Plaintiff when he was the Plaintiff's Depot Manager in Blantyre.

It is further to be observed that in his letter of resignation, the Defendant hastened to ask for permission to continue to live in the house and pay reasonable rent after his resignation. Such permission was refused. After the refusal, he wrote letters and asked for an extension of time while he looked for alternative accommodation. Such pleas, in normal circumstances, do not come from a person who has a right to live in the house.

The Defendant has tried to connect the question of his occupation of the house with the alleged breaches of certain contracts. I have had the opportunity of reading his letter of resignation, exhibit "M2". It is a most unambiguous document. It deals only with his intention to resign and the reasons that led him to that decision. If there were other legal reasons connected with the resignation, such as an offer to be allocated a fuel filling station and a contract job on a month-to-month basis, I am sure that that letter would have been the most appropriate place where such matters would have been spelt out. In any event, such matters are not connected with the occupation of the house. They are also included in his defence to the main action. If such contracts were entered into on a date subsequent to the date of the letter of resignation, the Court which will try the case will, no doubt, consider them.

Mr Chagwamnjira, for the Defendant, submitted that the Plaintiff's tenancy of the house in question should be governed by the Registered Land Act (Cap 58:01) of the Laws of Malawi and that section 46 of that Act should apply. A close study of the facts of this matter will easily show that that Act does not apply to the facts of this case. The lease of this house is governed by the lease agreement between the Malawi Housing Corporation and the Plaintiff. While it is governed by the terms of that lease, we cannot invoke the terms implied in the Registered Land Act which do not apply to it. As already stated above, the house was leased by the Malawi Housing Corporation to the Plaintiff. The Plaintiff granted a licence to the Defendant to live in the house only in so far as the Defendant was the Plaintiff's employee. Upon his resignation from the employment, the licence was cancelled. It was not only cancelled by inference, but was expressly cancelled by several letters which were written by the Plaintiff to the Defendant. I cannot see any legal right that would justify the continued occupation of the house by the Defendant.

In *Collison -v- Warren (1901) Ch.D 812*, the plaintiff, who was a hotel proprietor, executed a deed of arrangement for the benefit of his creditors. In the deed he assigned to the defendant, as trustee for the creditors, all his property in the said hotel business except the leasehold house in which the business was carried on. The deed also provided for the employment of the plaintiff as manager of the hotel and that during his engagement as manager, he shall be allowed to reside and board in the hotel together with his wife and family. In the course of time, the plaintiff was summarily dismissed from his position as manager of the hotel and the dismissal was confirmed and approved by the committee of inspection. The trustee asked the plaintiff to vacate the rooms which he occupied in the hotel.

The plaintiff refused to vacate the rooms and contended, *inter alia*, that he was entitled to reside in the hotel together with his wife and family.

It was held in that case by **Rigby, LJ**, on appeal and confirming the decision of **Buckley, J**:

"It is plain that he is not claiming to be there either as owner of the hotel or as trustee for the person who has charge upon it. That being so, I think there is no foundation for the plaintiff's claim to retain possession of the rooms. He has been summarily dismissed from his position of manager by the trustee with the approval of the committee of inspection. We have not now to consider the precise grounds alleged for the plaintiff's dismissal, but he has been summarily dismissed. The trustee has paid him a sum of money as covering all possible damages to which he may be entitled. We have not now to consider whether that is the right amount or not. Upon the plaintiff's dismissal his right during his engagement as manager to occupy rooms in the hotel was, in my opinion, terminated and,....Under the terms of the creditor's deed, the trustee is entitled to manage the business as he thinks fit, not as the plaintiff thinks fit. In my opinion, **Buckley, J**, was quite right in granting the injunction and the appeal ought to be dismissed."

The above case is, in my opinion, on all fours with the present case. The Defendant was given a licence to occupy the house on Plot No. KS/342 during his engagement as the Plaintiff's Depot Manager at Blantyre Depot. He resigned his post and that resignation terminated his engagement. The termination of his employment automatically terminated his right to occupy the Plaintiff's house. It is quite clear that he is not claiming to be in the house as the owner of the house. His claim has no legal basis whatsoever.

I am, therefore, satisfied that the principles which were enunciated in **American Cyanamid's** case, *supra*, have been established. The Plaintiff has satisfied me that it has a good claim to the right it seeks to protect and that a serious point exists which must be decided. I am further satisfied that damages would not be an adequate remedy to the Plaintiff, as the same will not be easy to quantify. I also reserve grave doubts as to whether the Defendant would be in a position to afford to pay the damages that may be assessed by the Court.

Accordingly, I grant an injunction to restrain the Defendant, whether by himself, his servants or agents, his wife or any other member of his family or whomsoever from remaining in or upon the premises known as Plot No. KS/342 in Nkolokosa Township in the City of Blantyre until after the trial of this cause of action. I further direct that this order be enforced with effect from 16th August 1993 from 8.00 o'clock in the forenoon.

bc

MADE in Chambers this 6th day of August 1993, at  
Blantyre.

*L A Chatsika*  
L A Chatsika  
JUDGE