

M/S J. F. Mwaungulu.

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 623 OF 1993



BETWEEN:

T-SHIRT MANUFACTURING INDUSTRIES.....PLAINTIFF

- and -

COMMERCIAL BANK OF MALAWI LIMITED.....DEFENDANT

CORAM: TAMBALA, J.

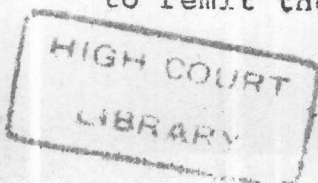
Maulidi, of Counsel, for the Plaintiff
Sauti Phiri, of Counsel, for the Defendant
Official Interpreter, Mthukane

R U L I N G

This is the defendant's application to vacate an order of interim injunction which I made on 13th May 1993. It was intended to be *ex-parte*. However, by agreement between Counsels of both plaintiff and defendant, the actual hearing of the application was *inter-partes*. Counsel for the defendant swore an affidavit in support of the application.

The plaintiff maintains a bank account with the defendant at its Livingstone Avenue Branch in Limbe. On 22nd April 1993, the defendant transferred K169,000 from the plaintiff's account to its International Department. The funds were intended to be used as part-payment for Bill of Exchange No. 92/76 for DM70,007.72. The plaintiff claimed that he was unaware of the reason for the transfer of the funds. He contended that the transfer was unauthorised and it was effected without his knowledge or consent. It was said that he issued a number of cheques against his account and he feared that they would be dishonoured. He argued that the conduct of the defendant would cause him irreparable damage. It was on the basis of these facts that I granted an order for interim injunction which was valid for 10 days.

The affidavit in support of the present application shows, *inter alia*, that the defendant received a collection order from ABN Bank in Germany and in the execution of that order it presented to the plaintiff on 16th January 1992 Bill of Exchange No. 92/76 for his acceptance. The plaintiff accepted the bill on 10th February 1992. It was for payment of goods supplied to the plaintiff. On 27th April 1992, the defendant obtained Exchange Control approval to remit the funds to the bank in Germany on behalf of the



plaintiff. On 27th July it remitted the money to Germany. There was, unfortunately, no local currency cover provided by the plaintiff and this was made possible by a fraud committed by an employee of the defendant in collaboration with the plaintiff or his agent. The local currency equivalent of the money remitted by the defendant to Germany comes to K189,284.81. The amount of K169,000 transferred to the defendant's International Department was intended to meet part of the money remitted to Germany.

If it is true that goods from a foreign supplier have been received by the plaintiff and that the defendant effected payment for them in foreign currency without the plaintiff providing the local currency equivalent of the remitted funds, it would be inequitable for me to compel the defendant to pay back into the plaintiff's account the money which was transferred to the defendant's International Department. The plaintiff cannot keep the goods and use them for his own benefit without paying for them. An order for injunction is granted upon the Court's exercise of its discretion. In the exercise of that discretion the Court is guided by equitable principles. In the present case there would be no justification for the bank to suffer the loss while the plaintiff retained the goods and probably used them in furtherance of his business. This Court would not, in equity, assist a plaintiff who wants to take advantage of an error or mistake committed by another person to the detriment of that other person. A person who seeks the assistance of the court of equity must come to that court with good intentions.

In the present application it is not my intention to decide whether or not the plaintiff furnished the local currency cover for the remittance which the defendant made in connection with the promissory note accepted by the plaintiff. That will be one of the crucial issues likely to be decided in the main action and a decision on it at this stage may have prejudicial effect on the outcome of that action. However, it is possible that the plaintiff has not paid K189,284.81, the proceeds of the bill of exchange which he accepted and on that basis it would be unjust for me to compel the defendant to transfer the K169,000 back into his account.

I am of the view that this application must succeed. The order for interim injunction which I granted on 13th May 1993 is hereby discharged. The plaintiff shall pay the costs of this application.

MADE in Chambers this 19th day of May 1993, at Blantyre.

D G Tambala
D G Tambala
JUDGE