

Villiera J.

Procedure

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1374 OF 1994



Between:

MRS SAONDA.....PLAINTIFF

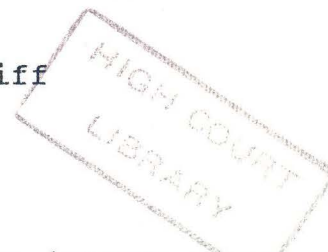
and

MR. CHIKAONDA.....DEFENDANT

CORAM: TAMBALA, JUDGE

Chagwanjira of counsel for the plaintiff
Mtukane, Official Interpreter

JBum



R U L I N G

This is an application for the granting of an interlocutory injunction. It is brought under 0.29 of Rules of the Supreme Court. It is supported by an affidavit sworn by the plaintiff.

The facts show that the plaintiff was offered a lease of plot No. NW/109/732 in Ndirande in 1992. Her intention was to develop it to operate a wholesale business. Before the lease was actually issued to her the land was transferred to Blantyre City Council. The City Council subsequently approved her application for lease relating to the plot in issue. It also approved her building plans.

The applicant cannot enter the plot because it is being occupied by the respondent who operates his garage business on it. The applicant regards the respondent as a trespasser. The latter has been offered another plot of land by City Council to enable him to vacate the disputed plot. He has not done so.

The effect of the injunction sought by the applicant would be the removal of the respondent from the plot and the entry upon it by the applicant. This is one of the remedies which the applicant seeks in the action which is awaiting trial. I think courts should be slow to grant that kind of injunction because it would enable a party to an action to get the remedy which he seeks without trial.


From the facts of this case it seems to me that since the plot was granted to the applicant she never entered upon it because of the presence of the respondent on it. The effect of the injunction would be to assist Blantyre City to give the applicant vacant possession without Blantyre City Council asking for that assistance.



Then it seems to me that the respondent was in occupation of the plot at the time when the lease was offered to the applicant. The fact that Blantyre City Council has offered him another plot to enable him to move out of the disputed plot would support that view. In that case the respondent may have certain rights against the City Council which may be prejudiced if the injunction is granted. I have a feeling that the granting of the injunction requested by the applicant would cause serious injustice to the respondent. An injunction is an equitable remedy. It would be contrary to the principles of equity to grant an injunction which would cause injustice.

I dismiss the application with costs.

MADE in Chambers this 1st day of December, 1994, at Blantyre.


D. G. TAMBALA
JUDGE