

IN THE REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
MZUZU REGISTRY: CIVIL DIVISION
CIVIL CAUSE NO. 59 OF 2017

Between

Gwaza Kaunda.....Claimant

-and-

Vincent Munthali.....1st Defendant

Reunion Insurance Company.....2nd Defendant

Coram:

Honourable Justice D. A. DeGabriele

Mr. C. Ghambi

Counsel for the Defendants and the Defendants

Mr. A Kanyinji

Counsel for the Claimant

Absent

Official Interpreter

DeGabriele, J

ORDER

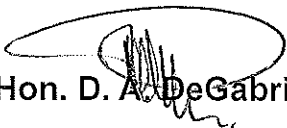
1. This matter came for mediation on 18 September 2018. The Defendants are being represented by Messers Lameck and Company, who were duly served on 14 September 2018 at 1530 hours. However, the Defendants or Counsel for Defendants did not attend the mediation session and no reasons were advanced. Counsel for the Claimant has applied to have the defence statement struck off pursuant to Order 13 Rule 6 of the High Court (Civil procedure) Rules of 2017.
2. A perusal of the court file shows that the Plaintiff had opted to have the case excused from mandatory mediation or an *ex-parte* application filed on 2 June 2017.

This shows that the Claimant wanted to proceed to trial without mediation and subsequently filed an amended statement of claim.

3. The matter was then scheduled for mediation pursuant to Order 13 Rule 3 (2) of the High Court (Civil Procedure) Rules 2017. The Defendant has not attended hearing. Counsel for the Claimant further argues that the defence be struck off because Counsel for the Defendant has no licence to practice. This Court is of the view that striking off the defence because counsel has no licence would lead to injustice on the part of the Defendants, who may not know that Counsel has no audience before the Court. It is the view of this Court that the Defendants must be given a chance to seek alternative Counsel or show up in court individually.
4. For that reason, the Court directs that this order be served on the 1st and 2nd Defendants in their individual capacity as well as Messers Lameck and Company. The 1st and 2nd Defendants are entitled to seek Counsel elsewhere as Messers Lameck and Company has no audience before the Court.
5. The matter is set for hearing on the 19 October 2018 at 10:30 a.m.

It is so ordered.

Made in Chambers at Mzuzu Registry this 3rd day of October 2018


Hon. D. A. DeGabriele
J U D G E



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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

ELECTORAL MATTER NUMBER 4 OF 2019

BETWEEN:

WELLS JOHN ADAMS

APPLICANT

AND

STELLA KAMANYA MKANDAWIRE

1st RESPONDENT

THE ELECTORAL COMMISSION

2nd RESPONDENT

CORAM: JUSTICE M.A. TEMBO,

Msuku, Counsel for the Applicant
Mankhambera, Court Clerk

ORDER

This is this court's order on the applicant's without notice application seeking an order of interlocutory injunction restraining the 2nd respondent from conducting parliamentary elections for Lilongwe City South West Constituency until determination of the applicant's claim in this matter.

The application is brought under Order 10 rule 27 of the Courts (High Court) (Civil Procedure) Rules.

This Court does not wish to take up too much time dealing with the substance of the application in terms of the grounds for seeking the order without notice.

Suffice to state that on 6th May 2019 the applicant filed an application, under Order 19 rule 3 of the Courts (High Court) (Civil Procedure) Rules, by which he claims that the 2nd respondent irregularly accepted the nomination of the 1st respondent as a parliamentary candidate in the forthcoming parliamentary election when in fact the 1st respondent is not eligible to contest under the relevant laws. And that therefore he was the proper candidate having been second to the 1st respondent in party primary polls. Both the claimant and the 1st respondent contested primary polls in the UTM Party.

The applicant then simultaneously filed the instant application for interlocutory injunction.

On the same day the instant application was assigned to one of my brother judges. My brother judge indicated that he cannot hear this type of case. This is borne out of a note dated 13th May 2019 and on the record.

On 13th May 2019, this matter was assigned to my court. Hence this order.

The parliamentary election sought to be restrained is scheduled to take place on the ninth day from today, namely, 21st May 2019.

The law is quite clear in Order 19 rule 19 of the Courts (High Court) (Civil Procedure) Rules that an application for an interim injunction in connection with an election matter shall be made inter partes, that is, with notice to the relevant defendants.

The applicant's application for an interim injunction without notice is incompetent. It has been made contrary to the relevant rule in Order 19 rule 19 of the Courts (High Court) (Civil Procedure) Rules. It is declined for that reason.

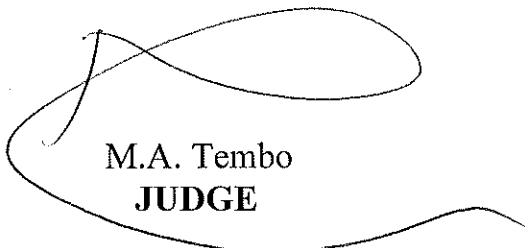
Further, section 114 (6) of the Parliamentary and Presidential Elections Act provides that no application shall be made to the High Court for an injunction or for an order restraining the holding of an election within fourteen days immediately preceding the date of the election.

What this entails is that even if the applicant's application were to be made inter partes now the same cannot be entertained at this point. The election is scheduled to take place within nine days from today.

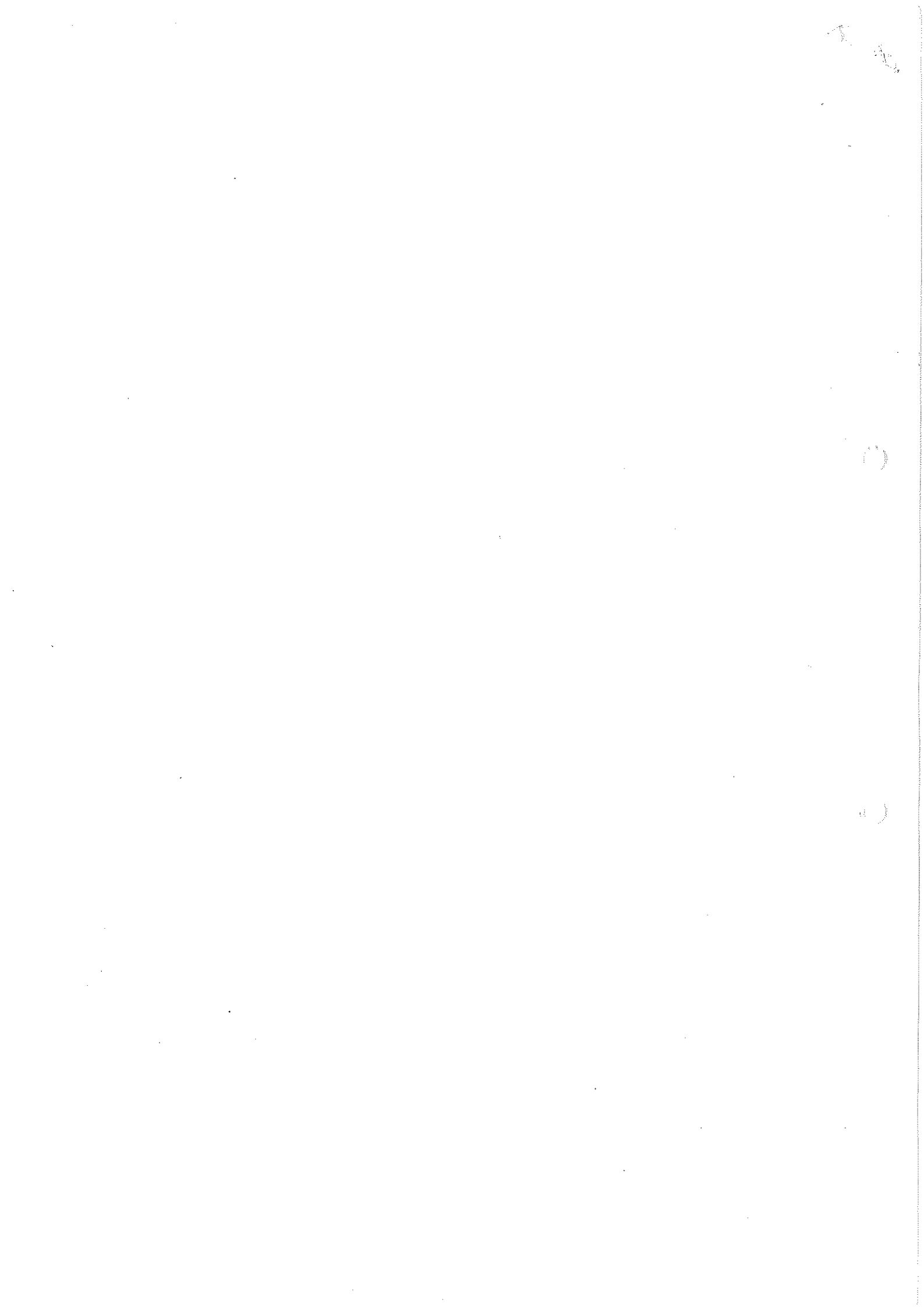
An application for an injunction cannot be made now since that is within the period stipulated under the prohibition in section 114 (6) of the Parliamentary and Presidential Elections Act.

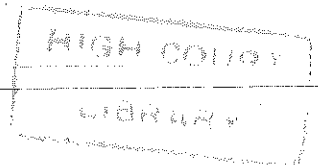
For the reasons stated herein the instant application is declined.

Made in chambers at Blantyre this 13th May 2019.



M.A. Tembo
JUDGE





IN THE HIGH COURT OF MALAWI
MZUZU REGISTRY: CIVIL DIVISION
MISC. CIVIL CAUSE NO. 120 OF 2016

Between

TAONA FRANCIS MUNDE (NEE MWALUGHALI) 1ST PLAINTIFF
JOY KINYANGWA MWALUGHALI 2ND PLAINTIFF
MATHIAS MWALUGHALI 3RD PLAINTIFF
MILICA MANDA (NEE MWALUGHALI) 4TH PLAINTIFF
JANE CHISENGA (NEE MWALUGHALI) 5TH PLAINTIFF
PATRICIA KALIZA (NEE MWALUGHALI) 7TH PLAINTIFF

-and-

JOSEPH KAONGA DEFENDANT

CORAM:

HONOURABLE JUSTICE D.A. DEGABRIELE

Plaintiffs/Counsel for Plaintiffs absent, but duly served

Mr. Mbotwa

of Counsel for the Defendant

Mr A. Kanyinji

Official Interpreter

DeGabriele, J

RULING

Introduction

The plaintiff herein were granted an *ex parte* injunction pursuant to Order 29 of the RSC through their counsel on 8th December 2016 restraining the defendant and his agents or servants from trespassing, encroaching or carrying out any developments on the disputed piece of land which belongs to the plaintiffs pending the hearings and determination of the main action by the court or until

another order made by the court. The court ordered that the plaintiffs should file the main action within 7 days, and the summons must be heard within 14 days

The defendant filed an *inter partes* summons on application for vacation of an order of injunction under Order 29 rule 1/22 of the RSC. The summons was duly served on the plaintiffs through their counsel and service was acknowledged and accepted. The court proceeded to hear the application.

The defendant argues that the injunction must be vacated on the grounds that the plaintiffs failed to disclose material facts, and that there is no triable issue. The defendant claims he was given the land in 2008 and has subsequently applied and obtained a lease. The plaintiffs by their own admission in the affidavit in support of the *ex parte* injunction state that they never lived in the area and had other family members looking after their interests. The evidence of the defendant shows that the plot was sold to him by one Marness Lughali who is one of the late aunties of the plaintiff who was caretaking on the land in issue. To this end I am of the opinion that the issue of ownership or user rights would have been dealt with effectively through a writ of summons application and not an injunction. Furthermore, the applicants can seek remedies elsewhere since there is no initial proof of fraudulent dealings.

The plaintiffs were served and acknowledged service but they have not appeared in person or through counsel, giving the impression that they are not interested to enforce their rights. For this reason, I vacate the injunction accordingly.

Costs for this action are for the defendant.

Made in Chambers at Mzuzu Registry this 19th day of June 2017


D.A. DeGatshole

JUDGE