



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. DeGatiele
JUDGE