

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NUMBER 444 OF 2019**

BETWEEN:

JANE MLOTHA.....CLAIMANT

AND

DR ANGELLA CHIMWAZA.....1st RESPONDENT

ANTHONY MLOTHA.....2nd RESPONDENT

AGNESS MLOTHA.....3rd RESPONDENT

CORUM : JUSTICE R.M CHINANGWA

Chihana Counsel for the Claimant

Banda Counsel for the Respondents

Nyirenda Court Clerk

RULING ON APPLICATION FOR AN INTERLOCUTORY INJUNCTION

1. Applications before the Court

The claimant through summons sought the following reliefs:

- a) A declaratory order that the claimant is the absolute owner and title holder of properties registered as Title No. Chitipi 24/1/2 and Title No. Chitipi 24/1/8.

- b) A declaratory order that the defendants wrongfully deprived the claimant, a beneficiary of a share property, she is entitled to from the estate of the Late Arthur Peter Mlotha, as per section 88 of the Deceased Estates (Wills and Inheritance) Act.
- c) Fair share of the estate of the late Arthur Peter Mlotha in accordance with the principles of distribution of intestate property to immediate family and defendants enumerated in section 17 of the Deceased Estates (Wills and Inheritance) Act
- d) Costs of the action

In addition to filing the summons, the claimants sought an order of interlocutory injunction ordering the respondents to refrain from evicting the claimant from her matrimonial house situated at Chitipi, registered under Title No Chitipi 24/1/2 and adjacent property at Chitipi registered under Title No Chitipi 24/1/8 until the final hearing and determination of the main suit.

Further, the respondents applied for a revocation of letters of administration obtained by the claimant. It is this courts view and finding that this application ought to be made on the file on which the letters of administration were obtained to enable the presiding judge appreciate all the facts on the matter.

The application was opposed, as the respondents filed an affidavit in opposition to the application for an interlocutory injunction. In brief the main argument is that since the claimant has remarried, she cannot remain in the matrimonial deceased property. Both parties had filed lengthy affidavits. This court has found it not necessary to summarize the affidavits because the application will be disposed of on a point of law.

2. Issue for Determination

This court has to determine whether the interlocutory injunction should be granted or not?

3. Analysis of Law and Finding

Order 10 rule 27 of the Civil Procedure Rules 2017 provides that a court may grant an injunction by an interlocutory order when it appears to the court that (a) there is a serious question to be tried, (b) damages may not be an adequate remedy and (c) it shall be just to do so. An injunction is an

equitable remedy and equity demands that he who comes to equity must come with clean hands: **Surtee v Leyland Motor Corporation (Mal) Ltd** [1990] 13 MLR 427 (HC). During the hearing the court was informed that in the year 2006 the claimants' legal representatives were Makolego and Company. Later the claimant changed lawyers without the knowledge of the defendants to A. Malijani and applied for letters of administration. In that application it is argued that the claimant informed the court that she is the only beneficiary and the deceased had no children. At the time of the application, the court is informed that there were already letters of administration with 4 administrators. The claimant had obtained her own letters of administration on Probate Cause No 1205 of 2006 and the claimant was also an administrator on Probate Cause No 1023 of 2005. Using the letters of administration obtained by the claimant individually in the year 2006, the claimant changed the title on the Chitipi property in her name.

It is on the above score that this court found that the claimant did not come with clean hands. The information given by the respondents was not disclosed to the court to enable the court arrive at a just decision. If anything, the parties could have raised all the issues pertaining to trial on the Probate Cause Number as it involved property on the estate of Late Arthur Mlotha. The court observes that the multiplicity of actions on the estate of Late Arthur Mlotha is bemoaned and puts unnecessary pressure on the court system and affects the realization of justice for all parties in the matter. It is on this score that the application for injunction was dismissed.

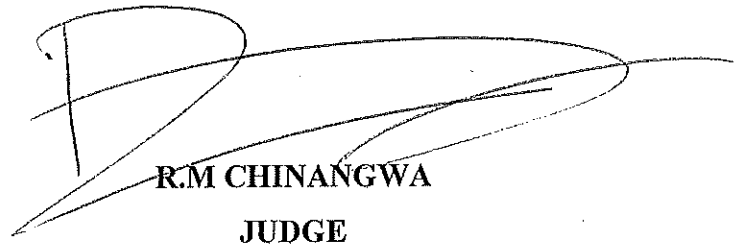
4. Finding

The court makes the following orders

- a) The application for an injunction is dismissed as the claimant did not come to court with clean hands.
- b) The status quo is to be maintained that is the claimant is to remain in the house without her new husband till final determination of the matter.
- c) Application for revocation of letters of administration to be heard on file number 1205 of 2006.
- d) The Chitipi property should not be sold or its value should not be changed

- e) Proceedings on the question of fair distribution of matrimonial property to be determined on Probate Cause No. 1023 of 2005. In addition, File no. 444 of 2019 and file no. 1023 of 2005 are to be merged.
- f) All property in the estate not to be sold and that which has been sold an account is to be given of the same.

Pronounced this 4th day of February 2020 at LILONGWE



R.M CHINANGWA
JUDGE