

**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**MISCELLANEOUS CIVIL CAUSE NUMBER 176 OF 2016**

**BETWEEN:**

**MULLI BROTHERS LIMITED.....1<sup>ST</sup> PLAINTIFF**

**CHOMBE FOODS LIMITED.....2<sup>ND</sup> PLAINTIFF**

**AND**

**PRESS PROPERTIES LIMITED..... DEFENDANT**

**CORAM: THE HONOURABLE JUSTICE HEALEY POTANI**

**Mr Chipembere, Counsel for Plaintiffs**

**Mr. Ngwata, Counsel for the Defendant**

**Mr. Mathanda, Court Clerk**

**RULING**

The plaintiffs obtained an *ex parte* injunction restraining the defendants from evicting them from some rented premises. There are two applications before the Court being the plaintiffs' application for continuation of the injunction and the defendant's application to discharge the injunction.

The pertinent facts as they emerge from the evidence put forward by the parties in the form of affidavits are that the plaintiffs occupied, as tenants, premises owned by the defendant. It so transpired that the plaintiffs were in arrears of

rentals prompting the defendant, pursuant to the terms of the tenancy agreements, to give notice of termination of the lease agreements and requiring the plaintiffs to vacate the premises within a stipulated period. Upon being served with the notice, the plaintiffs approached the Court with an *ex parte* application for an injunction restraining the defendant from evicting them from the premises. The Court, through the order of the Honourable Justice Kamwambe granted the *ex parte* injunction sought and directed that the plaintiffs should file an *inter partes* application within a period of 7 days which they did. It so turned out that the defendant also filed an *inter partes* application to discharge the injunction. The two applications are therefore essentially two sides of the same coin. What this therefore means is that the task the Court now has is to determine whether the injunction should continue having force or be discharged.

It is imperative to bear in mind at the outset that the usual purpose of an interlocutory injunction is to preserve the *status quo* until the parties' rights have been finally and substantively determined in the action. To achieve this purpose, certain principles that guide the court in deciding whether or not to grant an interlocutory injunction have evolved over the years. These principles were well articulated in the celebrated case of **American Cyanamid Company V Ethicon Limited** [1975] A.C. 396. Three points for consideration in deciding whether or not an interlocutory injunction should be granted stand out from that case. First and foremost, the party seeking the injunction must show that he has a good arguable claim to the right he seeks to protect with the aid of the injunction. In considering this aspect, the court must desist from deciding the claim based on the affidavits before it as it is enough if it has been shown that there is a serious question to be tried. The law is such that where the applicant has established a good and arguable claim, the court exercises its discretion in

deciding whether or not to grant the injunction by considering and weighing the balance of convenience or, properly put, the risk of causing some injustice. The case of **Fellowes & Son v Fisher** [1976] 1 Q.B. 122 stands for the proposition that in exercising such a discretion, the governing principle is that the court must first consider whether if the applicant succeeds in the main action, he would be adequately compensated by damages for any loss caused by the refusal to grant an interlocutory injunction. If damages would be an adequate remedy and the respondent would be in a position to pay them no interlocutory injunction should normally be granted no matter how strong the applicant's case might appear to be at that stage.

The Court heard formidable and spirited arguments from counsel for the parties. It is evident from all the material before the Court that the main basis on which the plaintiffs obtained the *ex parte* injunction was that the tenancy agreements the defendant invoked to purportedly evict the plaintiffs having not been stamped, as required by the law, could not be relied on by the defendant. Another point that was canvassed was that there was an order of stay of execution of warrant of distress pending an application to pay debt by instalments relating to the rental arrears due from the plaintiffs. The order of stay of execution was obtained by the plaintiffs in **Press Properties Limited v Mulli Brothers Limited and Chombe Foods Limited** High Court Principal Registry Miscellaneous Civil Cause Number 178/180 of 2012.

It is the considered view of the Court that in spite of the apparent contestation exhibited in manner the parties have handled the matter through the cross examination of one of the deponents, Mr Nyirenda, and their arguments and submissions, the resolution of the matter can easily be achieved by the court by taking a more focused and pragmatic approach. That said, it would be pertinent to state and bear in mind, at this juncture, that an injunction is an equitable remedy. Now proceeding on the premise that the tenancy agreements were not

stamped as required by the law and therefore cannot be relied on by the defendant to issue the eviction notice, one would likewise argue that the plaintiffs can also not rely on them to remain on the premises. Surely, the plaintiffs' conduct amounts to approbation and reprobation or blowing hot and cold. When it suits their interests, they would want to benefit from the alleged invalid tenancy agreements yet when it is against their interests, they would want the tenancy agreements to be treated as invalid. Such type of conduct is clearly unconscionable and militates against availing to the plaintiffs the equitable remedy of injunction they obtained *ex parte*.

It is also an established principle that the court exercises its discretion in deciding whether or not to grant the injunction by considering and weighing the balance of convenience or, properly put, the risk of causing some injustice. This leads to the issue of adequacy or inadequacy of damages. This is a case where damages would be an adequate remedy as it is a case about rentals or arrears of rentals which can easily be quantified. In terms of the applicable law, the court is enjoined to consider whether, if the injunction is granted, the defendant would be adequately compensated under the plaintiff's undertaking as to damages. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiffs would be in a position to pay them, there would be no reason to refuse the interlocutory injunction.

The facts in totality show that the plaintiffs have colossal and long outstanding rental arrears. That, in itself, in the estimation of the Court, raises serious doubts about their ability to compensate the defendant on their undertaking as to damages. This again militates against having in place an injunction in favour of the plaintiffs.

Before winding up, it must be stated that the Court is not amused that the plaintiffs chose to commence these separate proceedings in their quest to stop


their eviction from the defendant's premises when there was another subsisting matter being **Press Properties Limited v Mulli Brothers Limited and Chombe Foods Limited** High Court Principal Registry Miscellaneous Civil Cause Number 178/180 of 2012 arising from the same tenancy agreements. One tends to wonder why they did not simply file a counter – claim and make the application for an interlocutory injunction in the subsisting matter. It is accordingly ordered that these proceedings should be consolidated with the earlier cause/ proceedings and the claim herein shall stand as a defence or counter claim whichever will be most appropriate.

In the light of the foregoing, the *ex parte* injunction the plaintiffs obtained restraining the defendant from evicting them from the premises under the tenancy agreements the subject of these proceedings is hereby discharged.

For the avoidance of doubt, it must be stated that the order of stay of execution of warrant of distress pending the determination of the plaintiff's application to pay debt by installments obtained in **Press Properties Limited v Mulli Brothers Limited and Chombe Foods Limited** High Court Principal Registry Miscellaneous Civil Cause Number 178/180 of 2012 remains in force.

On incidental cost, guided by the principle that costs follow the event, they are awarded to the defendants.

**Made this day of October 23, 2020, at Blantyre in the Republic of Malawi.**

  
**HEALEY POTANI**  
**JUDGE**