



IN THE HIGH COURT OF MALAWI
CIVIL REGISTRY
CIVIL CAUSE NO. 144 OF 2020

HIGH COURT
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HIGH COURT OF MALAWI
CRIMINAL REGISTRY

27 JUL 2022

P.O. BOX 119
ZOMBA

BETWEEN

GRACE KWELEPETA

CLAIMANT

AND

COLLINS CHITIMBE
FRANCIS SEAN

1ST DEFENDANT
2ND DEFENDANT

CORAM : HON. NTABA, J.
Mr. W. Kosamu, Counsel for the Claimant
Defendant Absent

RULING

1.0 BACKGROUND

1.1 On 26th November, 2020, the Claimant bought an *inter partes* application under Order 10 rule 8 and Order 27 of the 2017 Civil Procedure Rules. She is seeking an interlocutory injunction to stop the Defendants whether by themselves and/or by their agents and/or servants agents or otherwise from further tarnishing the image and injuring the reputation of the Claimant by publicizing fabricated stories of theft, fraud and corruption on social media and anywhere until the determination of this matter of further order of the Court.. The *inter partes* application was ordered by the Court on 10th November, 2020 which Counsel Chirwa indicated that the same was duly served on the Defendants and that he would ensure that service of the same was duly returned onto the court file. Furthermore, when the 1st Defendant was called by the court clerk to get his email address for zoomlink, he informed that he had retained Counsel Gondwe but his phone was unanswered. The 1st Defendant did not also provide his details.

1.2 The Claimant supported her application with a sworn statement and skeleton arguments. She argued that on several occasions in the preceding months to November, 2020 caused to be published remarks on various WhatsApp groups alleging corruption, fraud to mention a few. The Claimant argued that the words published and contained in the postings were published as false news with an aim to ruin both political and social ambitions as well as her personal life.

1.3 The Claimants further argued that apart from the injunction, she is commencing an action in which she is seeking the following reliefs –

- 1.3.1 damages for defamation on the footing of aggravated damages;
- 1.3.2 any interlocutory order; and
- 1.3.3 an order as to costs of the action.

1.4 She argued that the law is in favor of her being granted the said injunction because she has rights which are currently in jeopardy and which she is seeking to enforce. Furthermore, that the balance of convenience is in her favor and according an injunction should be granted. Therefore, she prayed that this Court grant the prayer.

2.0 DETERMINATION OF THE APPLICANT'S APPLICATION

2.1 Firstly, the principles governing the grant or refusal of interlocutory injunctions in Malawi still remain those, which were already laid down in the case of *American Cyanamid Company vs. Ethicon Limited* [1975] AC 393, which have also been adopted in Malawian courts. In that case, Lord Diplock laid down three principles which are: (i) the plaintiff must show that he has a good arguable claim to the right that he seeks to protect; (ii) the court must not, at the interlocutory stage, attempt to decide disputed issues of facts on the affidavits before it; it is enough if the plaintiff shows that there is a serious question to be tried; (iii) if the plaintiff satisfied these tests then the grant or refusal of an injunction is for the exercise of the court's discretion on a balance of convenience. An interlocutory injunction will not be granted or discharged if it is found that the applicant did not make a full and frank disclosure of all material facts.

2.3 In granting an injunction, it has to be established before the court that there is an arguable claim to the right, which the applicant seeks to protect. In deciding what would amount to an arguable claim, *Mwaungulu, J (as he then was) in Gwanda Chakuamba vs. Tembo, Civil Cause No. 2509 of 2001* stated that the applicant must raise a triable issue as opposed to earlier decisions (before the *American Cyanamid case*) requiring the applicant to raise a *prima facie* case. He went on to say that the action must not be frivolous and vexatious and must have a prospect of success.

2.4 In the present case, the Claimant is claiming that various rights have been and are interfered with, namely, right to life, right to privacy, right to economic activity to mention a few. She further argued that the postings of the Defendants apart from violating the above rights but also caused damage to her reputation. Therefore, in determining this application, this Court must determine that she has raised a *prima facie* case and not that her case has a prospect of success. However, in determining this, the prescripts of Order 10 rule 8(27) on a serious

case to be tried, this Court must restrict itself to the law and facts of the case as indicated in the sworn statement and skeleton arguments. Incidentally, the facts and law herein allow this Court to opine that the Claimant has satisfied this prerequisite of having a serious case to be tried and with preliminary evidence to support such. The facts do show that on the face of it, that her rights are being violated and similarly her reputation defamed as such making an injunction to protect them necessary.

- 2.5 The Court should however stress that it is very reluctant to curtail another person's right at a preliminary level like this application unless it is absolutely necessary. For the case herein, the right which this Court is being asked to curtail with an injunction is the freedom of expression. Nevertheless, this Court at this preliminary stage has noted that apart from the *prima facie* evidence of defamation, the postings have a number of elements which in their essence make an injunction more necessary due to their allegation of corruption. In conclusion, this cemented the Court's considered view that there is need for an injunction against the Defendant.

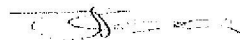
3.0 CONCLUSION

- 3.1 This Court therefore grants the injunction prayed for by the Claimant on the following conditions –

- (a) injunction to last until the determination of the matter;
- (b) the Defendants whether by themselves and/ or by their agents and/or servants agents or otherwise from further tarnishing the image and injuring the reputation of the Claimant by publicizing fabricated stories of theft, fraud and corruption on any social media platform;
- (c) be immediately compelled to pull down and remove all defamatory articles disparaging of the Claimant on any social media platforms; and
- (d) originating process for commencement of the matter to be filed within forty five (45) days of this Order.

- 3.2 Costs to be in the cause.

Made in Chambers on 5th December, 2020 at Zomba.



Z.J.V Ntaba
JUDGE