



IN THE HIGH COURT OF MALAWI
CIVIL DIVISION
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 116 OF 2021
(Before Justice Rachel Sophie Sikwese)

BETWEEN:

SMALLHOLDER TEA COMPANY LIMITED.....APPLICANT

AND

LAMECK MONJEZA.....RESPONDENT

CORAM

HON. JUSTICE RACHEL SOPHIE SIKWESE

Tannalegal Associates; Counsel for the Applicant

Counsel for the Respondent

Mithi; Official interpreter

ORDER ON AN EX- PARTE APPLICATION FOR URGENT INTERLOCUTORY
INJUNCTION

Under Order 10 Rule 27 of Courts (High Court) (Civil Procedure) Rules 2017

SIKWESE J

Background

1. On 25 March 2021, the Applicant filed this ex parte application seeking an order of interlocutory injunction to restrain the Respondent whether by himself and/or servants or

otherwise from trespassing on, occupying, using and/ or developing or selling the land belonging to the Applicant situated at Mtambanyama area, Village Headman Njovu, Senior Chief Khwethemule in Thyolo district or doing anything which amounts to disturbing the enjoyment of the land until the determination of this matter or further order of this Court.

2. The Applicant has filed with the application, a certificate of extreme urgency arguing that this matter is of extreme urgency and that the Applicant is unable to opt for an inter-partes application because the Respondent is continuing to lay claim, occupy on and develop the land in dispute and that if the matter delays further waiting for inter-partes hearing, the Respondent may develop the land further thereby depriving the Applicant use of the land.
3. In addition, the Applicant has attached exhibit "STC 2" an image depicting a photograph of a "newly constructed house" built by the Respondent "just close to a house of the Applicant" on the disputed land.
4. The said "STC2" is a substantial house under construction at roofing level.

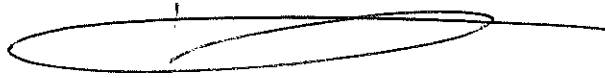
Considerations

5. Order 10 rule 30 of the Courts High Court Civil Procedure Rules, 2017 (CPR) simply states that where a party seeks an urgent relief, the party shall (a) state the urgent relief; and (b) inform the Court, that the party is seeking an urgent relief.
6. The provision and the whole CPR do not provide an interpretation of what constitutes urgent relief for purposes of this application. In this Court's view, urgency must not be self-created. In this matter the Respondent is said to have first encroached on the property in 2019 and has continued to so trespass until to-date, two years later.
7. Further according to exhibit "STC2" the Applicant watched the Respondent build his house right next to the Applicant's house up to roofing level before seeking any relief.
8. The delay to seek relief is not explained. The conduct of the Applicant deprives it from claiming urgency because if it was urgent, the Applicant would have sought relief much earlier.
9. In view of the fact that the urgency was self-created and the delay unexplained, the application for urgent relief should fail.

ORDERS

10. The ex-parte application for urgent interlocutory injunction is denied.
11. The matter shall proceed in the ordinary course of proceedings before this Court by way of summons which were filed on 25 March 2021 on a first come first served basis.

Made this 8th day of April 2021 at High Court (Civil Division) Blantyre.



Rachel Sophie Sikwese

JUDGE