

Registrar

IN THE MALAWI SUPREME COURT OF APPEAL  
AT BLANTYRE

M.S.C.A. CIVIL APPEAL NO.24 OF 1988  
(Being Civil Cause No.331 of 1988)



BETWEEN:

E. FERNANDES ..... APPELLANT

AND

S.W. MPIGHU ..... RESPONDENT

BEFORE: The Honourable the Chief Justice (Mr. Justice Makuta)  
The Honourable Mr. Justice Mtegha, J.A.  
The Honourable Mr. Justice Mbalame, J.A.  
Chatsika, Counsel for the Appellant  
Chizumila, Counsel for the Respondent  
Kadyakale, Law Clerk  
Maore, Court Reporter

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JUDGMENT

Makuta, C.J.

This is an appeal arising from an Interlocutory injunction granted on 21st July, 1988 by Mr. Justice Unyolo restraining the appellant by himself, his servant or agent or otherwise from interfering with the running of the business of jack-pot machines which were installed at divers places in the City of Lilongwe.

Briefly the facts are that by a writ of summons dated 7th June, 1988 the Respondent brought an action against the Appellant for the return of eight jack-pot machines together with an account of the business transacted with the said machines. As an interim measure the Respondent took out a summons for an interlocutory injunction to restrain the Appellant as mentioned above. After carefully considering Counsels' submissions the learned Judge ordered that the Appellant should hand over to the Registrar of the High Court the eight machines and keys thereof for safe keeping until the action commenced by the Respondent has been determined.

The appeal is against this order. The grounds of appeal are as follows:

1. The Learned Judge erred in both law and fact in failing to consider that the machines were used for business and that their usefulness depended upon being operated for the business





and therefore the injunction did not have the effect of preserving any status quo as the remedy which either party would have, irrespective of whichever way the case was decided, was damages in monetary terms.

2. The Learned Judge was confused as at page 2 of the Ruling he stated that whether the Appellant was right in repossessing the machines was an issue to be tried and yet at page 3 in granting the injunction he relied on the fact that the contract of sale between the Appellant and the Respondent was governed by the Sale of Goods Act thereby appearing to have made an unqualified finding that the Appellant was wrong in repossessing the machines.
3. The points, if any, upon which the Ruling was made are so confusing and lacking in logic that it becomes difficult to say that the injunction was granted upon any basis known to law.
4. The injunction is not in the interest of any of the parties and as such ought not to have been granted.

On ground 1, it is observed that the Respondent deposed in his affidavit in support of the application that he had been offered by the Appellant to buy some jack-pot machines on a trial basis and that when he was satisfied with their performance the price and mode of payment would be discussed. He further deposed that he accepted the offer and had the machines installed at Lilongwe City Council Rest House, Lingadzi Inn and Konkuya Booze House Night Club. He began operating the machines on commercial basis on 2nd November, 1987. The Respondent further deposed that when he was satisfied with the machines he paid K5,000 to the Appellant. It is then stated that at that point the Appellant said that he would sell the machines at K25,000 each. The Respondent did not accept this and requested the Appellant to get evidence of landed cost and age of the machines before the price could be agreed. The Respondent also further deposed that the Appellant agreed to this request but to his surprise the next thing the Respondent heard was that the Appellant had reported him to the Police for the offence of obtaining the machines by false pretences.

The deposition in the affidavit as outlined above raises some doubt as to whether there was a contract at all. This is because the parties, if what was deposed is true, were still in the process of negotiating for the price of the machines. If this is the position what legal right was being violated which the Respondent was trying to protect by an interlocutory injunction? In our view, none. The basic purpose of the grant of an interlocutory injunction is to preserve the status quo until the rights of the parties have been determined in the action. In our view what was being preserved in these



proceedings was the status quo to negotiate for the price. In this Court's judgment, according to the affidavit, there does not seem to be any serious question to be tried. There is, therefore, no real prospect of the Respondent succeeding at the trial.

It must be borne in mind that the grant of an interlocutory injunction is discretionary. It is also an equitable remedy and he who comes to equity must come with clean hands. In this regard it was deposed by the Appellant in his affidavit in reply to the application that the Respondent had drawn some cheques for payment of the machines and the cheques were dishonoured by the bank and returned, marked "account closed". We do not think that the equitable remedy can be available to such applicant. He has not come to Court with clean hands.

We would like to mention one further point the Appellant mentioned in his affidavit. This is a copy of an agreement which was marked EF 18. The date of this document is 24.2.88 and it talks about purchase by the Respondent of 10 extra machines which do not seem to be the subject of this appeal. This is significant in that the Appellant is using this agreement to support his case. We get the impression that this agreement has not come into effect yet because the so called agreement for the eight machines was supposed to have been made in 1987.

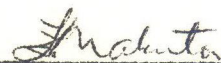
So far as ground 2 is concerned it is fair to mention that the Learned Judge did not make any specific finding on the law or facts. What the Learned Judge did was to express doubt as to whether there was any agreement or whether the Appellant was justified in repossessing the machines.

We have examined grounds 3 and 4 and we are of the view that they do not add anything substantial to the appeal. It is therefore not necessary to comment on them.

We have carefully considered the appeal and on the reasons given above, it succeeds. The order for interim injunction is dissolved and the machines should be returned to the Appellant. The Respondent will pay the costs of these proceedings both here and in the lower Court.


DELIVERED at Blantyre this 29th day of September, 1988.

(Signed)



MAKUTA, C.J.

(Signed)



MTEGHA, J.A.

(Signed)



MBALAME, J.A.

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