



JUDICIARY

IN THE MALAWI SUPREME COURT OF APPEAL

AT BLANTYRE

MSCA CIVIL APPEAL NO. 7 OF 2010

(Being High Court Principal Registry Misc. Civil Application No. 110 of 2009)

BETWEEN:

MOMAHED MUNIF ABDALLAH AI NADHI.....APPELLANT

- and -

ANTI-CORRUPTION BUREAU.....RESPONDENT

BEFORE: THE HON. JUSTICE TAMBALA, SC, JA
THE HON. JUSTICE MTAMBO, SC, JA
THE HON. JUSTICE TEMBO, SC, JA

Katuya assisted by Zambezi, of Counsel for the Appellant
Nampota, Director of Anti Corruption Bureau assisted by
Mwala, of Counsel for the Respondent
Mwale, Chief Law Clerk
Singano (Mrs), Senior Personal Secretary

J U D G M E N T

TEMBO, SC, JA

This is an appeal by Mr. Abdullah Al-Nadhi against a High Court ruling dated 26th October, 2009, which was made by the learned

Manyungwa, J, in the matter of Dr. Elson Bakili Muluzi and in the matter of Section 23A of the Corrupt Practices Act.

By its ruling, the High Court refused to grant an order staying execution of the seizure warrant dated 20th June, 2009, which the Anti-Corruption Bureau (ACB) had obtained from the High Court, in so far as in its schedule two the seizure warrant related to the property known as Keza Office Complex situated on title Number Chichiri 1/1, being Plot Number CC1157 (Keza Office Complex). In granting the seizure warrant, to the ACB, to seize Keza Office Complex the High Court also made an order which placed Keza Office Complex under the custody, care and control of the ACB, whereby any rents, charges, fees or dues or other monies whatsoever, in respect of Keza Office Complex, were to be paid to the ACB or its agents and that such monies had to be deposited into an interest-earning holding account. By that ruling, the High Court also refused the appellant's application for the variation of the seizure warrant so as to strike out Keza Office Complex from the list of properties and assets affected by the seizure and freezing warrants.

The instant appeal is supported by eighteen grounds of appeal. The appellant seeks the following reliefs: (a) that the ruling of the lower court refusing to vary the seizure and freezing orders and warrant dated 20th June, 2009, be reversed; (b) that in place of that ruling, this Court should vary the seizure and freezing orders and warrant by striking out Keza office Complex from the orders and warrant; and (c) that costs be for the appellant both here and below.

The relevant facts and sequence or chronology of events pertaining to the instant appeal are well captured in the appellants skeleton arguments, and they are as follows: On 8th July, 2005 a restriction notice was addressed to the Land Registrar (Blantyre) and the Commissioner for Lands. The notice was issued under section 23(1) of the Corrupt Practices Act (CPA). The Director of Anti Corruption Bureau restricted the Land Registrar and the Commissioner for Lands from authorizing the sale of Keza Office Complex without his consent. Subsequently, the then owner of Keza Office Complex, Atupele Properties Limited, applied to the High Court for a reversal or variation of the restriction notice, in question, in so far as it restricted the sale of Keza Office Complex. On 9th November, 2005, the High Court delivered its ruling by which it vacated the restriction notice. Besides, by that ruling, the Minister responsible for Land matters was ordered to give his consent for the transfer of the title in Keza Office Complex from Atupele Properties Limited to the intended purchaser within a period of seven days from the date of the ruling, thus, 9th November, 2005. The learned Judge declined an application for stay of the ruling which the ACB made. Subsequently, the ACB appealed to this Court against the High Court ruling of 9th

November, 2005, by which the High Court vacated the restriction notice and ordered the Minister responsible for land matters to grant consent for the transfer of title in Keza Office Complex. On 14th November, 2005, the ACB made a fresh application for stay of the High Court's ruling of 9th November, 2005, which our learned brother Honourable Justice of Appeal Tambala sitting as a single member of this Court, dismissed on 16th November, 2005. In essence, Justice of Appeal Tambala thereby also approved and ratified the order earlier made by the High Court requiring the Minister responsible for land matters to grant his consent for the transfer of title in Keza Office Complex within the time specified, then, by the High Court.

Thereafter, in February, 2006, Atupele Properties Limited sold and transferred title in Keza Office Complex to the appellant in the instant case at a price of K285 million. On 2nd March, 2007, this Court delivered its judgment on the substantive appeal against the High Court ruling of 9th November, 2005. This Court's ruling was on points of law which were raised for its determination. We dare say, in that regard, that our ruling did not in anyway whatsoever and howsoever interfere, and was not at all meant to interfere, with the High Court's ruling and orders of 9th November, 2005.

Thereafter, the matter went to rest until 19th June, 2009, when the ACB applied for and obtained, ex-parte, an order and seizure warrant which necessitated the application by the appellant for variation thereof, and which eventually led to the decision of the High Court against which the instant appeal lies.

To begin with, it is our considered view that although the appellant has raised eighteen grounds of appeal, his appeal, in the main, can, and should without more, readily be considered and determined on the basis of six grounds as follows: That –

- 3:12 the learned Judge erred in law and fact in holding in effect that by its judgment dated 2nd March, 2007 in the case of **ACB -v- Atupele Properties Limited**, the Supreme Court reversed the rulings of the High Court and the Supreme Court sitting as a single member;
- 3:13 the learned Judge erred in law in failing to hold that when the respondent applied ex-parte for a seizure warrant and stated in its supporting affidavit that the Supreme Court had reversed the ruling of the High Court and that of a single member of the Supreme Court in the case of **ACB -v- Atupele Properties**

Limited, that, that statement amounted to a suppression of a material fact;

- 3:14 the learned Judge erred in fact and law in holding that Keza Office Complex was dissipating when there was no evidence of dissipation;
- 3:15 the learned Judge erred in law in holding that there was technical dissipation of Keza Office Complex;
- 3:16.5 the property (Keza Office Complex) is in no way dissipating despite the learned Judge's erroneous reasoning to the effect that the property "has technically dissipated"; and
- 3:17 the learned Judge erred in law in failing to hold that the sale and transfer of title in Keza Office Complex was executed under a court order which was never set aside, that the rights of the appellants were not liable to be defeated and were free from all other interests and claims whatsoever including the ACB's claims.

We start with ground 3:17. We are in complete agreement with the contention and submission of the learned Counsel for the appellant on this point. The **Registered Land Act** (Cap. 58:01) in section 25, on rights of the proprietor, provides as follows –

The right of a proprietor, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of the Court, shall be rights not liable to be defeated except as provided in this Act and the Land Act and shall be held by the proprietor, free from all other interests, and claims whatsoever, but subject –

- (a) to the leases, charges and other encumbrances, if any, shown in the register; and
- (b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 27 not to require noting on the register –

Provided that -

- (i) nothing in this section shall be taken to relieve a proprietor from any duty or

obligation to which he is subject as a trustee, or as a family representative;

- (ii) the registration of any person under this Act shall not confer on him any right to any minerals or to any mineral oils as defined in the Mining Act and the Mining Regulations (Oil) Act respectively unless the same are expressly referred to in the register.

We must observe, without more, that the circumstances of the instant case have no relevance to section 27. We are in agreement with the submission of Counsel for the appellant that the appellant had purchased Keza Office Complex from Atupele Properties Limited after both the High Court and this Court, in the capacity of its single member as earlier observed, had allowed the disposal of Keza Office Complex, by refusing to allow the ACB to continue restricting the disposal of Keza Office Complex through a restriction notice. In these circumstances, we concur with learned Counsel for the appellant that it would be absurd, unreasonable and indeed quite unfair to now allow seizure of Keza Office Complex and freezing of the income therefrom when Keza Office Complex is in the hands of a third party who is not connected with the offences under the Corrupt Practices Act and indeed a third party who acquired Keza Office Complex upon furnishing valuable consideration, in the sum of MK285 million. We in that respect, again, observe that the sale under court order had been effected when the High Court and this Court had vacated, so to speak, the restriction notice which the ACB had earlier on obtained. In the circumstances, the appellant was under no restraint of any kind in regard to which he had to guard against, even the fact that there were court proceedings relating to Keza Office Complex. The effecting of the sale had the prior authorization of the Court. We would on that ground alone allow the appeal.

Be that as it may, it is also the considered view of the Court that Keza Office Complex is not dissipating, in that it is intact. The notion of "technical dissipation" espoused by the learned Judge in his Judgment, we reason, does not have any grounding in the law.

Besides we must say it again, as noted above, that this Court has not at any time by its decision, not even that in the **ACB -v- Atupele Properties Limited** delivered on 2nd March, 2007, reversed the rulings of the High Court and of a single member of this Court in regard to the vacation of the restriction notice in question. Thus, it remains a firm view of this Court that the sale of Keza Office Complex was and is still sanctioned by Court in that regard.

Finally, it is our firm view that the ACB is guilty of inordinate delay in its effort to prosecute the criminal matter in question. In the circumstances, it would be wrong for the Court to reinstate the restriction notice which would operate to the prejudice of the appellant, who is a **bona fide** purchaser of Keza Office Complex with adequate consideration.

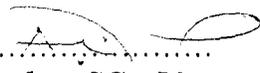
In the circumstances and for all the reasons we have expressed hereinabove, we allow the appeal in its entirety. Costs are for the appellant both here and below. We so order.

For the avoidance of doubt, our Judgment is that the ruling of the lower court refusing to vary the seizure and freezing orders and warrant dated 20th June, 2009, is reversed; that thereby the seizure and freezing orders and warrant are varied by striking out Keza Office Complex from the list of properties or assets listed therein; that henceforth rents, charges, fees or dues or other monies whatsoever, in respect of Keza Office Complex, shall cease to be paid to the ACB, or its agents and that thereby all such monies so far deposited and held by the ACB or its agents (in such interest-earning account) be forthwith paid or restored to the appellant without further legal process.

DELIVERED in Open Court this 1st day of July, 2010 at Blantyre.

Signed 
D.G. Tambala, SC, JA

Signed 
I.J. Mtambo, SC, JA

Signed 
A.K. Tembo, SC, JA