



**REPUBLIC OF MALAWI**  
**JUDICIARY**  
**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**CIVIL DIVISION**  
**CIVI CAUSE NO. 103 OF 2020**  
**(Before Honourable Justice J.M. Chirwa)**

**BETWEEN**

**JEAN ZAM'MIMBA.....CLAIMANT**

**-and-**

**MR. KUMITENGO.....DEFENDANT**

**Coram: Honourable Mr. Justice J. M. Chirwa**  
Mr. Dziwani, Counsel for the Claimant  
Mr. Minjalo, Counsel for the Defendant  
Doreen Mithi, Official Court Interpreter

## RULING

### **1.0 Introduction:**

This is an interpartes application by Jean Zam'mimba ("the Claimant") for the continuation of the order of interlocutory injunction granted *ex parte* on the 9<sup>th</sup> day of April, 2020. The application is supported by a sworn statement of the said Jean Zam'mimba and Skeleton Arguments.

The application is opposed by the Defendant, Mr. Kunitengo. A sworn statement sworn by Friday Kunitengo and Skeleton Arguments have been filed for the purpose.

### **2.0 Background:**

By a Summons issued on the 9<sup>th</sup> day of April, 2020 the Claimant commenced these proceedings claiming the following:

- (a) an order of permanent injunction restraining the Defendant, his agent, servants or whosoever and howsoever acting from wrongfully and unlawfully seizing or interfering with the Claimant's motor vehicle Registration Number BLK 7119, a Toyota Succeed;
- (b) an order for delivery up of the Claimant's said motor vehicle;
- (c) damages for the loss of the use of the said motor vehicle;
- (d) damages for inconvenience;
- (e) damages for the loss of business;
- (f) damages for any diminution in the value to the said motor vehicle during the period it was with the (Defendant); and
- (g) costs of the action.

### **3.0 Statement of the parties' cases:**

#### **(a) The Claimant's case: -**

It is the Claimant's case that she is the registered title holder and owner of motor vehicle Registration Number BLK 7119, a Toyota Succeed, ("the said motor vehicle"). It is the Claimant's case further that her husband, Ernest Gadama, owes the Defendant some money and that as part of the loan agreement her said husband pledged as collateral a truck belonging to his friend which the friend later withdrew.

It is the Claimant's case still further, that notwithstanding that she was not a party to the loan Agreement and the said motor vehicle not have been pledged as security for the loan, the Defendant seized the said motor vehicle without a court order or her consent.

It is the Claimant's case still further that as a result of the wrongful seizure of the said motor vehicle she was suffering irreparable damage due to the loss of use in her business and transporting her sick relatives for medical checkups.

**(b) The Defendant's case:**

It is the Defendant's case that the Claimant's husband borrowed from him a sum of K2.6 million as per Exhibit "A," a loan agreement dated the 14<sup>th</sup> of October, 2019. It is the Defendant's case further that the Claimant's husband voluntarily surrendered to him the said motor vehicle.

It is the Defendant's case still further that the Claimant's attempt to have the order of injunction granted herein continued is a clear abuse of the court process and selfish endeavour aimed at having the matter suspended without bringing it to its conclusion. It is the Defendant's case still further that the balance of convenience in the present matter lies in denying the order extending the order of interlocutory injunction.

It is, in the premises, the Defendant's prayer that the present application for the continuation of the order of interlocutory injunction made herein be dismissed with costs.

**4.0 Issue for Determination:**

The issue for determination is whether or not the validity of the order of interlocutory injunction granted on the 9<sup>th</sup> of April, 2020 should be extended.

**5.0 Determination:**

Order 10 Rule 27 of the Courts (High Court) (Civil Procedure) Rules, 2017 ("the CPR") which deals with interlocutory injunctions provides as follows:

*"The Court may, on application, grant an injunction by an interlocutory order when it appears to the Court: -*

*(a) there is a serious question to be tried;*

(b) damages may not be an adequate remedy; and

(c) it shall be just to do so,

and the order may be made unconditionally or on such terms or conditions as the Court considers just.”

Order 10 Rule 30 of the CPR which deals with claims for urgent relief provides as follows:

“ 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.”

As earlier in this Ruling indicated the order of interlocutory injunction granted herein was on an application made *ex parte* after it had been certified by the Claimant’s legal practitioners that the application was of urgency because the Defendant would in the absence of an order of interlocutory injunction continue to wrongfully and unlawfully, detain the said motor vehicle.

This Court having granted the said order on an application made *ex parte*, deemed it fit to make the said order conditional on, *inter alia*, the Claimant taking out an interpartes application to continue the validity of the said order. This was done in order to give the Defendant an opportunity of being heard.

It is, in the premises, erroneous for the Defendant to contend that the present application is an abuse of the court process. On the contrary, the application is properly before this Court.

In the present application there, is no doubt, that a serious question to be determined by the court, to wit, whether or not the Defendant was justified in seizing and detaining the said motor vehicle in the face of uncontroverted evidence showing that the Claimant is both the registered title holder and owner thereof.

This Court is precluded from attempting to determine this question on the sworn statements – see **Lord Denning** in **American Cyanamid Company v Ethicon Limited** [1975] AC. 396.

In determining whether or not damages, would be an adequate remedy, this Court is mindful of the assertion by the Claimant that she uses the said motor vehicle in transporting her sick relatives to seek medical attention for their varying ailments

like the stroke for her father. This assertion has not been controverted, in any way, by the Defendant. This Court would, in the premises, be inclined to hold the view, that more damage or harm would be occasioned by the Claimant by refusing to grant an Order of Interlocutory injunction herein. But even without the Claimant's said assertion, it is the considered view of this Court that given that the Claimant is both the registered title holder and owner of the said motor vehicle while the Defendant has not evidenced any claim of right thereto save that the said motor vehicle was voluntarily surrendered to him by the Claimant's husband, it would only be just to allow the Claimant continue to use her said motor vehicle than allow the Defendant continue detaining the same.

It is worthy of note that the said motor vehicle has not been registered by the Defendant as a collateral in terms of the Personal Property Security Act, Cap. 48:03 of the Laws of Malawi. The Defendant's continued possession of the same as a collateral would thus be illegal.

**6.0 Conclusion:**

The Claimant having satisfied the requirements under Order 10 Rule 27 of the CPR, this Court now proceeds to order that the Order of Interlocutory Injunction granted herein on the 9<sup>th</sup> day of April, 2020 be continued until the determination of the within action or until a further order of this Court. It is so ordered.

**7.0 Costs:**

The costs of any proceedings are in the discretion of the court and as a general rule normally follow the event.

In exercising its discretion on costs this Court grants the costs of this application to the Claimant as the successful party in any event. It is further so ordered.

Dated this 30<sup>th</sup> day of October 2020.

  
CHIRWA J  
JUDGE