IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 106 OF 2000

MOBIL OIL (MALAWI) LIMITED .....PLAINTIFF

VERSUS

F. SACRANIE ..... DEFENDANT

CORAM: D.F. MWAUNGULU

Nkhono, Legal Practitioner, for the Plaintiff

Tsingano, Legal Practitioner, for the defendant

Tembo, Official Interpreter

Mwaungulu, J

ORDER

The application

In this application, the plaintiff and landlord, Mobil Oil (Malawi)(Private) Limited, seeks a mandatory injunction against the defendant and subtenant, Mr. F. Sacranie. The action relates to plot No 241 in Mangochi District. The plaintiff originally leased it from Malawi Railways Limited, a statutory corporation. Under the privatisation scheme, Malawi Railways divested its interest to another company.

The plaintiff entered an underlease with the defendant. The plot, in actions in this Court, is contentious between the landlord's assignees. This action is a problem at the other end. The landlord's successor purports leasing the plot during a subsisting lease. Granting the mandatory injunction therefore depends on resolving the relationship between the landlord and the two tenants. The problem at the top end is significant on the other end to the action between the plaintiff and Mr. F Sacranie.

The contention

If I understand correctly, the plaintiff contends the defendant vacates the premises and

give possession because the underlease between the plaintiff and the defendant expired on December 31, 1999. The defendant admits his underlease determined on December 31, 1999. He contends he is there through a lease between a company he is managing director for and the landlord's successor. Alternatively, he contends the plaintiff, his landlord, has no title because the lease with the plaintiff's landlord expired. The plaintiff counters the lease with the landlord is on because of a lease agreement between the plaintiff and the landlord. The defendant contends there was no lease because the Minister never approved the lease.

The plaintiff's case

The plaintiff's case bases on the original lease and a contract for lease. The lease was between Malawi Railways Limited, landlord, and the plaintiff, a tenant, on November 11, 1988. It was for three years ending on 30th September, 1991. The rent was K75 a month. Clause 3 (2) said, if the tenant held over, either party could determine the lease by a three-months notice to quit.

The plaintiff, under the lease, was to construct something, which he did, on the premises. The plaintiff contends that, to avoid Ministerial approval, necessary for leases above three years, Malawi Railways Limited and the plaintiff agreed to initially enter a three-year lease and immediately enter a lease for ten years. A letter of intent of July 12, 1988, signed by both, evidences Malawi Railways Limited's unequivocal commitment. The letter is consideration for the three-year lease. The letter varies the rent. It leaves terms in the three years' lease intact. The plaintiff contends it paid rents beyond the agreement. The plaintiff contends the arrangement is consistent with such leases where time is provided to recoup the investment.

The plaintiff sublet the premises to the defendant for three years ending on December 31, 1999. On December 14, 1999, the plaintiff demanded possession at the expiry of the lease. The defendant refuses to vacate and challenges the plaintiff's title.

The defendant's case

The defendant concedes the plaintiff's three-years lease. He contends, when it expired on September 30, 1991, it was not renewed. The plaintiff was a tenant by holding over. The defendant contends Malawi Railways and the plaintiff intended entering a ten-year lease after the three years. Such lease was however invalid for lack of Ministerial approval. He contends that holding a ten-years lease existed without Ministerial approval amounts to aiding and abetting illegality.

The main contention is the lease with Satehzan Car Hire Limited, a company for which he is managing director, and Malawi Lake Services Limited. Malawi Lake Services Limited took over after Malawi Railways Limited's privatisation. Malawi Lake Service Limited requested bids on how to run the premises. The plaintiff and Mr. F. Sacranie submitted proposals. Mr. Sacranie's proposal won. Malawi Lake Services are to execute a lease with Satehzan Car Hire Limited where the defendant is a shareholder and Managing Director. The Minister consented. The deed is not executed. The defendant contends the plaintiff has no right to an injunction against the defendant.

Resolving the matter

Malawi Lake Services Limited are successors to Malawi Railways Limited and hence bound by agreeements entered by the latter

The status of Malawi Lake Service to the plaintiff, the defendant, the tenant to the plaintiff, and Satehzan Car Hire limited, the tenant under the lease relied on the defendant must be resolved first. Malawi Lake Service Limited is now the landlord. It succeeds Malawi Railways Limited.Demises (leases) and contracts of a lease of Malawi Railways limited bind Malawi Lake Service as successor.

Accepting that the plaintiff is a tenant by holding over, the tenancy from year to year is not terminated

First, is consideration of the lease between the plaintiff and Malawi Railways Limited. The original lease was for a term fixed for three years. Without conceding the point, the law is clear. Holding over after a term of years creates a tenancy from year to year when the tenant pays or agrees to pay rent at the previous yearly rate. This was decided in Bishop v. Howard, (1823) 2 B.&C. 100 and in 1826 in Doe d. Cates v. Somerville, (1826) 6 B.&C. 126. The Court of Appeal in Ireland approved the principle in O' Keeffe v. Walsh, (1880) 8 L.R.IR. 184. This is a matter of evidence and not law as Maughan, J., observed in Ladies' Hosiery and Underwear, Ltd. v. Parker, [1930] 1 Ch 304. The plaintiff paid increased annual rents. Regardless the lease anticipated holding over. There is evidence, as the defendant concedes, the plaintiff was tenant by holding.

The defendant has not shown Malawi Railways Limited or Malawi Lakes Service Limited terminated the lease. Neither Malawi Railways Limited nor their successor Malawi Lakes Services Limited served Mobil Oil (Malawi) (Private) Limited with a notice to quit. Without such notice, a tenancy from year to year continues in the tenant and his assignees and representatives. The immediate reversion equally continues in the landlord and his assignees or representatives (Doe d. Landsell v. Gower, (1851) 17 Q.B. 589). Without a notice to quit, the lease continues. The expressly provided that, after holding over, either party could terminate by three months notice to quit. This supplanted the common law six months notice. The defendant has not shown that the defendant's tenancy with Malawi Railways Limited or Malawi Lake Service Limited determined. Without notice to quit, the tenancy between the plaintiff and Malawi Lake Service Limited continues.

The tenancy is not for holding over

The tenancy here is not that of holding over. A valid demise for ten years expiring, as the defendant contends, on September 30, 2001 exists.The letter of intent, signed by Malawi Railways Limited and Mobil Oil (Malawi) (Private) Limited, evidences a lease agreement. The agreement and the parties' conduct countenance an agreement that justifies specific performance. The time remaining is such that the Court could order specific performance. I mind Lord Eldon's words in Alley v. Deschamps, (1806) 13 Ves. 225, about delay in applying for specific performance. The Lord Chancellor said:

"It would be very dangerous to permit parties to lie by, with a view to see whether the contract will prove to be a gaining or losing bargain, and, according to the event either

abandon it, or considering the lapse of time as nothing to claim a specific performance, which is always a subject of discretion."

This is not so here. The parties continued to act on the agreement. The plaintiff paid and Malawi Railways Limited and Malawi Lake Services Limited received rent for eight years or more. The plaintiff possessed through the defendant. In Sharpe v. Milligan, (1856-57) 22 Beav. 606, the court granted specific performance. The plaintiff, on the agreement, entered possession and paid rent regularly for fourteen to fifteen years. As we see shortly, Malawi Railways Limited was to obtain the Minister's consent. It is unjust not to grant specific performance to the plaintiff where Malawi Railways Limited stood over soliciting the consent. In Shepheard v. Walker, (1875) L.R. 20 Eq. 659, the court ordered specific performance for the landlord because the tenant did not return the draft timeously.

This leads to the second aspect, the rule in Walsh v. Lonsdale, (1882) 21 Ch. D. 9. In the Court of Appeal, Lord Jessel, M.R., said:

"There is an agreement under which possession has been given. Now since the Judicature Act the possession is held under the agreement. There are not two estates as there were formerly, one estate at common law by reason of payment of rent from year to year, and an estate in equity under the agreement. There is only one court and the equity rules prevail in it. The tenant holds under an agreement for a lease. He holds, therefore, under the same terms in equity as if a lease had been granted, it being a case in which both parties admit that relief is capable of being given by specific performance."

Where, like here, on a contract for lease the court could order specific performance, there is a tenancy on the same terms as the agreement. The effect is not to create a tenancy from year to year. There was a lease between Malawi Railways Limited binding its assignees and successors and the plaintiff for ten years.

This lease is valid despite lack of a Minister's consent

The point taken for the defendant is that such a contract and ultimately the lease, whether in equity or at law, is invalid for lack of Minister's consent. Paragraph 7 of the affidavit in opposition says:

"Since the entering into ten year's lease was subject to Government approval . . . as is required under the Land Act, and that since no such Government approval was obtained in respect of the proposed lease it can be said that the so called ten year lease never came into existence at all."

Paragraph 8 provides:

"To declare that a ten-year lease came into existence immediately upon the expiry of the initial three year lease would be to aid and abet an illegality as Malawi Railways and Mobil Oil did not follow the provisions of Regulation 2(l) of the Land Regulations made under section 39 of the Land Act."

This Court and the Supreme Court considered section 24 A of the Land Act and regulation 2(l) of the Land Act Regulations. S.C. Yiannakis Limited v. Mchawa, Civ. Cau. No.877/2000, unreported, a judgement of this court, supports the defendant's claim. The decision, however, is wrong and, as we see shortly, is per in curium, the Supreme Court decision in Bazuka & Company v. Blantyre & Estate Agency Limited, [1981-83] 10 M.L.R. 173. Section 24 A (1) provides:

"Any person who intends to offer for sale or otherwise to convey, lease, transfer or assign any private land shall, not less than thirty days before he makes such offer or otherwise conveys leases, transfers or assigns, give notice in writing to the Minister of his intention."

Section 2 defines "private land" as land owned, held or occupied under a freehold title, or a leasehold title, or a Certificate of Claim or registered as private land under the Registered Land Act.

Regulation 2(l) provides:

"The covenants to be implied in every lease granted under the Land Act . . . shall, subject to the provisions thereof be . . not to assign, subdivide, underlet, mortgage, charge or part with the possession of the demised premises or any part thereof without first obtaining the written consent of the Minister; and to submit to the Minister for his approval a draft of the instrument to give effect to the transaction, and, if the Minister shall approval the same and give his consent, and to produce to the Minister the completed instrument giving effect to the assignment or other disposition within four months of the date of the execution thereof . . ."

The defendant contends the ten-year lease needed governmental approval and was ineffective because of lack of approval. The Act does not provide that such a lease needs approval. Section 24 A provides that the lessor notifies the Minister. Notification is all that has to happen. The Act does not provide that the Minister approves or consent to such a lease. The Minister has just to know. The Minister, according to the Act, is to do nothing. The lessor is supposed to notify the Minister. He commits an offence if he "leases" without notifying the Minister.

Section 24 A (2) creates a crime if the lessor "leases" without notification. The section, therefore, has to be interpreted strictly. The duty arises when the lessor is to actually demise, when he is to effect the deed. Reading section 24 A (1) on its own shows that this is what the legislator intended. The words "intends to offer" should be restricted to where the land owner is to sell. When the landlord is to lease, the duty arises when he is to effect the lease or demise by deed, not before then. The section should then read, without the other instances in the section and restricting it to the lease:

"Any person who . . . lease(s) . . . any private land shall, not less than thirty days before he . . . leases . . . give notice in writing to the Minister of his intention."

This is confirmed by the exception in relation to leases found in section 24 A (3) (b) of the Act:

"Nothing in this section shall apply to . . . any agreement to lease, or any lease, for a non-renewable term of not more than three years . . . "

An agreement to lease need not be notified to the Minister. Equally any lease for a non-renewable term of not more than three years need not be notified to the Minister. Consequently, failure to inform the Minister cannot vitiated the lease agreement.

In S.C. Yiannakis Limited v. Mchawa the parties agreed to a lease. The lessor informed the Minister about the lease. The Minister never replied. The parties acted as if the lease was in place till the problems in the action. Justice Mbalame said:

"In the instant case, although notification was made to the Minister, no consent was given, yet the parties, with full knowledge of what was required of them, proceeded to act as if such consent had been granted . . . It follows, therefore, that, if there was any contract between the parties, that contract was null and void ab initio, as it was illegal under the Act. It can neither be enforced nor can it be said to have been frustrated, as it never did exist."

The contract to lease cannot be vitiated by failure to inform the Minister. In the Act, there is no duty to inform the Minister of a lease agreement. Neither does the Act require the consent of the Minister for a lease agreement. Consequently, a lease agreement creates a lease at equity and at law. It cannot be said that the lease agreement never created a lease. It creates a lease for which Courts grant specific performance. A different interpretation means failure to inform the Minister would change all at equity and at common law. This the legislature can do. Courts insist legislators, and legislators normally do so, use clear terms to alter the common law or equity expresly or impliedly. The agreement here created a lease. It was not, as was decided in this Court, void ab initio.

In S.C. Yiannakis Limited v. Mchawa the Court thought regulation 2(l) was a statutory requirement failure to comply with which vitiated the lease agreement and lease. The misconception arises because this Court never appreciated what regulation 2(l) and indeed all the regulations are. They are covenants implied in the lease. They are made under section 39 following section 13 of the Act. Their nature and effect of a noncompliance are found in the Supreme Court judgement in Bazuka & Company v. Blantyre Land & Estate Agency Limited. It was contended that the contract for lease and, therefore, the lease(at equity or at law) made under it, was illegal for lack of a Ministers consent under regulation 2(l). Skinner, C.J., said:

"It is clear that the purpose of the Act for which these regulations are made is that contained in s.13 thereof, namely, implied covenants in a lease as prescribed by the Minister. These covenants are terms of the lease in the same way as express covenants, and again, breach of them is not penalised as a criminal offence but is dealt with by way of forfeiture or entry. This is put beyond doubt by s. 14, which gives the Minister power of forfeiture and reentry on the happening of certain events, including a breach of the covenants contained or implied in a tenant's lease, powers which the Minister may or

may not decide to use. It seems to us that the effect of the Regulations is not to make contravention of them illegal, it is to give the Minister a statutory right of forfeiture or re-entry, and such becomes part of the lease."

This Court in S.C. Yiannakis Limited v. Mchawa never considered this Supreme Court decision. This Court's decision is per in curium. The case was not brought to the attention of the judge. He was a judge of tremendous ability to overlook a decision clearly binding on this court.

The Supreme Court, among other things, concluded the contract was legal because the Land Act Registration Rules providing for implied covenants do not provide a penalty for contravention of the rules. The Chief Justice said:

"These covenants are terms of the lease in the same way as express covenants, and again, breach of them is not penalised as a criminal offence but is dealt with by way of forfeiture or entry. This is put beyond doubt by s. 14, which gives the Minister powers of forfeiture and re-entry on the happening of certain events, including a breach of the covenants contained or implied in a tenant's lease, powers which the Minister may or may not decide to use."

The critical question is whether a noncompliance with the Act or the regulations under the Act leaves the lease and agreement to lease null and void. The Chief Justice thought, correctly, that section 31 of the Land Act did not apply in the case because, like in S.C. Yiannakis Limited v. Mchawa, the land was in an area, namely a municipality or a township, excluded from the purview of section 27 (1) of the Act. The comments the Chief Justice makes about sections 31 and 39 of the Act need consideration.

For the areas affected by section 31(1) of the Act the penalties are prescribed in section 31 (3). The Regulations are made by the Minister under section 39. Section 13 itself, as the Chief Justice implies, never says the implied covenants shall be prescribed by the Minister. The covenants are strictly statutory and are with the Minister who is not a party to the lease. The Minister has power under sections 31 (1) to regulate, manage or control the user of land and under section 39 to make regulations. Under section 39 the Minister can prescribe penalties for breach of such regulation. Admittedly, the Minister, as the Chief Justice observed, never prescribed penalties for violations. The Act provides penalties for violation. Moreover under section 32 (1) the Minister can by notice require a lessee to comply with the regulations failure to comply with which renders the occupation unlawful. If there is anything that the regulations or the law regards unlawful, it is an offence under the Act. Consequently the Act provides penalties for violations.

The defendant submits that holding there was a lease in this case means aiding and abetting an illegality. The Supreme Court, has decided that contravention of the covenants implied in a lease and in particular under regulation 2 (l) is not an illegality. Consequently an agreement to lease is not vitiated by lack of the consent of the Minister. The Supreme Court did not consider whether the lease or demise under the agreement is vitiated. This is important because, as seen, the lease agreement creates a lease in equity enforceable by specific performance and results in a legal lease under the rule in Walsh v Lonsdale. The defendant contends the lease does not arise even on the principles stated.

Lack of consent makes the lease illegal and non-enforceable. In S.C. Yiannakis Limited v. Mchawa this Court thought the lease and demise are null and void because the lease agreement is void ab initio.

The approach is to consider whether the Act makes contracts or demises void for contravention. The Act does not provide expressly that the contract for lease or the lease itself are void if provisions are disregarded. If it had cadit questio, the contract would be unenforceable. In St John Shipping Corporation v. Joseph Rank Ltd [1957] 1 Q.B.267, 283, per Devlin, J., said:

"The second principle is that the court will not enforce a contract which is expressly or impliedly prohibited by statute."

The Land Act not expressly vitiating the contract for lease or the demise, the question is, whether, on true construction, the Act meant to avoid the lease and the contract or proscribe some particular act. Lord Devlin in Archbolds (Freightage) Ltd. v. S Spanglett Limited, [1961] 1 Q.B.374, said:

"The statute does not expressly prohibit the making of any contract. The question is therefore whether a prohibition arises as a matter of necessary implication."

The various tests employed are only guides and inconclusive. Much depends on the intention of the legislature and the purposes of the statute judging from the words used, the mischief the legislature wanted to arrest and goals the legislature wanted to attain. Generally where the Act does not expressly remove the plaintiff's civil remedies, one should ask the question whether from the purpose of the Act, the circumstances in which the contract is made and to be performed, it is against public policy to enforce the contract (Geismar v. Sun Alliance and London Insurance Ltd.[1978] Q.B. 383).

Most provisions in the Act penalise one party, the one who wants to lease. There is no duty and no penalties against the lessor. This case is similar to Smith v. Mawhood (1845) 14 M & W 452. There the seller was not prevented from recovering for the price of cigarettes because the statute required him to have a tobacco licence and paint his shop. The question then is whether on the correct construction the statute prohibits the act or just lays an obligation. "The sole question is whether the statute means to prohibit the contract," Cope v. Rowland (1836) 2 M. & W.149, 157. The statute prohibits the contract if it protects the public from fraud or injury or promotes an aspect of public policy (Victoria Daylesford Syndicate Limited v. Dou [1905] 2 Ch. D. 624).

The Act on its true construction never meant to prohibit the contract for lease or the demise for lack of consent of the Minister under rule 2 (1) of the Regulations. For a lease agreement, as seen, no obligation to notify the Minister exists. Yet the agreement itself creates an estate in law and in equity. It is unnecesary, the Act having absolved the lessor of the duty to notify the Minister of a lease agreement, for the legislature by regulation prohibits the contract for lease for lack of consent. It might be said that this allows the lessor avoid the Minister's consent, as happened here, by creating a demise by an agreement to lease. Apparently this is the position at law and equity. This Court, since the Judicature Acts of 1893, statutes of general application in 1902, applies both. The

common law and equity are not expressly or impliedly affected by the Act. Moreover if the law was that lack of the Minister's consent vitiates an agreement to lease and lease, most lessees would be at the ransom of lessors. Lessors would, with impunity, be deleterious on their duty to obtain the Minister's consent or, to frustrate the agreement, just refuse to obtain the Minister's consent. These covenant are between the lessor and the Minister, the pretending lessor cannot enforce them against the lessor. Equally, the Minister cannot intervene in an agreement between the lessor and the pretending lessee. This Court however can grant specific performance to the pretending lessee. That creates an actual demise or lease that compels the lessor to obtain the consent or the Minister to use his right of forfeiture or reentry against the lessor.

Neither was it the intention of the legislature in the Act to vitiate the actual demise nor lease following the agreement to lease. If the parties' civil remedies are preserved, the legislature intends not to avoid the contracts under the Act. The same principle applies to the actual lease or demise. In Bazuka&Company v. Blantyre Land & Estate Agency Limited the Chief Justice said the Act preserves the Minister's forfeiture and reentry powers for breach of covenants. The Minister chooses to invoke them or not. If the Minister does not the lease remains. The Minister can notify the lessor to comply. As long as the lessor complies the lease continues. The lessor can underlet and pass title in law and equity. The legislature therefore never intended lack of consent to vitiate the lease.

Mobil Oil (Malawi) (Private) Limited are entitled to quiet enjoyment

There was, therefore, no illegality in the transaction or in the lease created at equity and under the rule in Walsh v. Lonsdale. The plaintiff had a subsisting lease that, by the time of dispute, bound Malawi Lake Services Limited, successors to Malawi Railways Limited. The plaintiff has an implied covenant to quiet enjoyment. This is settled by the Court of Appeal in Jones v. Langton [1903] 1 K.B. 253. Obviously the plaintiff does not have such a right against the Minister. The Minister enjoys the status of a title paramount. The lessor cannot covenant out the right of a person claiming through title paramount. The lessor can shield himself from any such claim by the lessee. Theplaintiff has a right against non-interference from Malawi Railways Limited and their successors in title or assignees and all sundry claiming through the landlord. This includes Malawi Lake Services Limited as successors in title to the Malawi Railways. Obviously Malawi Lake Service Limited, in purporting to lease while the lease with the plaintiff subsists, were interfering with the plaintiff's right to quiet enjoyment. F. Sacranie and Satehzan Car Hire Limited, if claiming under a lease with Malawi Lake Service Limited, are caught through Malawi Lake Services Limited in interfering with the plaintiff's right to quiet enjoyment. That right binds the lessor and all people claiming under him.

Caveat emptor

Mr. F Sacranie and Satehzan Car Hire Limited obviously were entitled to enter a lease with Malawi Lake Service. A lessee however is a buyer to whom the maxim caveat emptor applies. It may be that Mr. F Sacranie, particularly Mr. F. Sacranie who was

Mobil Oil (Malawi) (Private) Limited's lessee, and Satehzan Car Hire Limited did not know the extent of Mobil Oil (Malawi) (Private) Limited's lease. This was at their peril, they should have enquired (Herbert v. Maclean (1860) 12 Ir. Ch.R. 84; Mitchell v. Steward, (1866) L.R. 1 Eq. 541; and Wilson v. Hart, (1866) L.R. 1 Ch. 463). In any event Mr. F.Sacranie, both as tenant from the plaintiff and Director of Satehzan Car Hire Limited, was aware of the lease between Mobil Oil (Malawi) (Private) Limited and Malawi Railways limited and hence Malawi Railways Limited's successor in title, Malawi Lake Services Limited.

Mr. F Sacranie or Satehzan Car Hire Limited cannot question Mobil Oil (Malawi) (Private) Limited's title.

The point taken for the defendant is that he cannot be liable because he is in the premises as Director of Satehzan Car Hire Limited who now have the lease. That is a difficult position to sustain. He was the plaintiff's tenant. As tenant he is estopped from denying his landlord's title. He cannot deny the plaintiff's title. On the affidavits the lease agreement between Malawi Lakes Services Limited and Satehzan Car Hire Limited was negotiated when and while Mr. F. Sacranie was the plaintiff's tenant. Satehzan Car Hire Limited, as long as it relies on Mr. F. Sacranie's agreement arrived at when he was such tenant are equally estopped from denying the plaintiff's title. This is, because as the defendant's own affidavit shows, there is no deed of assignment or lease between the defendant or Satehzan Car Hire Limited and Malawi Lake Service Limited. In Doe d. Bullen v. Mills, (1834) 2 A & E 17; Doe d. Haden v. Burton, (1840) 9 C & P 254; and Doe d. Thomas v. Shadwell, (1839) 7 Dowl 527 it was decided that where there is no deed of assignment or sublease, a person obtaining possession from the tenant or subtenant by an arrangement with the tenant or subtenant by collusion or otherwise with him is estopped, like the tenant, from proving such title aliunde to deny the landlord's title. In Doe d. Bullen v. Mills, Lord Denman, C.J., said:

"It appeared to me at the trial, that, as the defendant got possession under Williams, who was in possession under Bullen, the lessor of the plaintiff, he was not at liberty to question Bullen's title. I think that if we yielded to this application, we should contravene the rule that a tenant is not to dispute the title of his landlord. The tenant would then have nothing to do, in order to bring the landlord's right into question, but to part with the property to another person."

Taunton, J., said:

"I do not apprehend the distinction which Mr. Erle has endeavoured to draw in this case. The defendant Mills, having paid 20L for the lease, and thereupon taken possession, put himself in the situation of an assignee of the lease, and was as much estopped from disputing the landlord's title as the immediate lessee. He stands in the shoes of that party for all purposes, better or worse."

Patteson, J., said:

"That was either an act of collusion between Williams and him, to enable him to dispute the landlord's title; or a purchase by him of Williams's interest. In either case the defence

was inadmissible."

A mandatory injunction should issue

I said all this because, in my judgement, this is an appropriate case where to grant a mandatory injunction on an interlocutory application though the result is almost like granting the final order. I am aware that this Court has jurisdiction to grant a mandatory injunction on an interlocutory application though that might be granting the final order. The discretion is exercised where the case is very strong and the case clear. In that respect the court exercising the discretion must consider the case's prospect of success. However, where it is necessary to make an injunction in the interim the order should be granted irrespectively of whether the appropriate standard of probability of success is achieved. This is the view of the authors of The Supreme Court Practice. 1994 ed., Sweet & Maxwell, London, pp 516:

"The Cynamide guidelines are not relevant to mandatory injunctions. The case has to be unusually strong and clear before a mandatory injunction will be granted at the interlocutory stage even if it is sought to enforce a contractual obligation. However where it is necessary that some mandatory order has to be made ad interim the court will make the order whether or not the high standard of probability of success at trial is made out."

The case cited for the principle is Leisure Data v. Bell [1988] F.S. R 367.I have not found the report to read the case. It is, in my judgement, a good principle that this Court must approve. In this matter Mobil Oil (Malawi) (Private) Limited are entitled to quiet enjoyment of the premises without interference from the successors of Malawi Railways limited and all who claim under them. This means Malawi Lake Services Limited, successors to Malawi Railways Limited, and Satehzan Car Hire Limited, who claim because of a lease between Satehzan Car Hire Limited and Malawi Lake Services Limited. If Mr. Sacranie is holding over after the lease, a mandatory injunction, would be appropriate for him to leave the premises because his lease with Mobil Oil (Malawi) (Private) Limited was for a term certain and ended at the end of the term. Mr. F Sacranie was notified well before the term that his landlord, Mobil Oil (Malawi) (Private) Limited, was terminating the lease. If Mr. Sacranie is on the premises because of the lease that Satehzan Car Hire Limited and Malawi Lake Services Limited entered, Mobil Oil (Malawi) (Private) Limited has a right against a successor in title and all who claim under him. I do not think that the right to an injunction in this regard is affected by, as it is claimed for the defendant that the rent is certain and therefore damages measurable. Such a view would be tantamount to allowing the landlord and those claiming under him to breach an implied term in the contract for quite enjoyment. That cannot be allowed. The case is much like what happened in Jones v. Heavens, (1877) 4 Ch.D. 636. There there was even an agreement to claim liquidated damages. Bacon, V.C., ordered injunction. I would grant the mandatory injunction here.

Made in Chambers this 20th Day Of March, 2000.

D.F. Mwaungulu
JUDGE