IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 3575 OF 1999

BETWEEN:

MOBIL OIL (MW) (Pty) LIMITED.....PLAINTIFF

-and-

MALAWI RAILWAYS LIMITED.....1ST DEFENDANT

-and-

MALAWI LAKE SERVICES LIMITED.....2ND DEFENDANT

-and-

SATEHZAN LIMITED.....3RD DEFENDANT

CORAM: THE HON. JUSTICE A.C. CHIPETA

Mr Nkhono; of Counsel for the Plaintiff/Respondent

Mr Ndau; of Counsel for the 2nd Defendant/Applicant

Mrs Chingana, Official Interpreter

RULING

The substantive matter is between the plaintiff company, which I will hereafter alternately simply refer to as Mobil, and three defendants as appears in the title of the case. Out of all these parties this ruling only relates to two parties. The Applicant is the

second defendant, Malawi Lake Services Limited, and the Respondent is the plaintiff.

Before I come to the question that I am supposed to determine in this application, I think it is necessary to lay a little background in the case. The facts which are not in dispute are that in 1988 Plot No. 241 at Monkey-Bay in Mangochi then property of the 1st defendant (Malawi Railways Limited), was let to Mobil on a three year lease. (See Applicant's exhibit "SC2"). Later that same year it was agreed between the same parties that, subject to government approval, on expiry of the three year lease the parties would enter into a ten year lease on the same property. (See Applicant's exhibit "SC1"). However the 1st three years lease ended up elapsing without the relevant government approval being

secured. Even to date that approval has not yet been secured. This notwithstanding all this time Mobil has been and still is on the property in question. In the long period of time that has elapsed some significant changes have taken place. In 1994 Malawi Railways Limited was restructured. A result of that exercise was the creation of Malawi Lake Services Limited and the assignment of the Plot in question from its original owner, Malawi Railways Limited, to this new company. Efforts by Malawi Lake Services Limited to enter into a lease agreement concerning the same Plot with some party other than Mobil, and subsequent efforts by that other party to evict the old tenants, Mobil, from the property in question has ignited such friction that Mobil is suing or being sued left, right and centre, so to speak, in relation to this property. I am verily informed by both learned Counsel in this case, that the present case is only one out of the many that have been commenced.

The quarrels in these cases basically revolve around the questions:-

(a) whether the three year lease having elapsed and the ten year lease not having materialized Mobil has any tenancy rights over the property in question, and if so what rights;

(b) whether if Malawi Lake Services Limited has indeed taken over ownership of the property herein, it has or has not so assumed title thereon subject to the obligations and liabilities that used to bind its predecessor in title, i.e. Malawi railways Limited; and

(c) what place, if any, Mobil occupies in this new arrangement of title vis-a-vis Malawi Lake Services Limited, the successor in title.

All these questions will be fully answered in due time when this case and its sister cases reach trial.

For the present what is of concern is the interlocutory injunction Malawi Lake Services obtained against Mobil on 4th December, 2000 on an ex-parte application. The order in question restrains Mobil from subletting, assigning or transferring possession of a filling Station on the Plot in question herein or from offering the same to the public or to any other person or in any other manner granting its possession to some third party without the permission of Malawi Lake Services. The restraint order extends beyond Mobil to its servants or agents and bears the usual undertaking as to damages. It was directed that the order be and remain in force pending the hearing of an inter-partes application or until further order of court.

What triggered the securing of the interlocutory injunction now under consideration, it appears, is a Newspaper advertisement as depicted in exhibit “SC3” of Malawi Lake Services in its ex-parte summons. The title thereof read “Monkey-Bay Filling Station up for Grabs”. This advertisement offered to members of the public an opportunity to run the filling station in question and called for applications before 29th November, 2000. Besides, as an attraction to would-be applicants, the advertisement cited “Good volumes, reliable fuel deliveries, adequate tankage, impeccable service reputation and many more.”

At the hearing of this inter partes summons Mr Ndau, of Counsel for the Applicant,

forcefully argued for the continuation of the injunction. Part of the argument was that the plaintiff wants the injunction to continue in order to preserve the status quo. The thrust of the argument was that as matters stand Mobil's current continued occupation of the Plot is itself in question and that this case will determine whether it continues in occupation or not. It is thus felt by the Applicant that in the circumstances Mobil should not be allowed to transfer occupation or possession of the property in question to any third party. Among authorities cited in support of this status quo argument were the cases of Satehzan Limited -vs- Mobil Oil (Pvt) Ltd Civ. 3456 of 1999 (unreported), Mangulama and Others -vs- The Development of Malawi Enterprises Trust Civ. 1893 of 1996 (unreported), and Lunchbox Limited -vs- Malawi Property Investment Co. Ltd. Civ. 1702/96 (unreported).

A second point presented for urging the continuance of the interlocutory injunction was to the effect that in the circumstances prevailing Mobil must be viewed as a tenant at will and that as such it cannot sublet or transfer possession of the property herein to a third party as it would be unlawful for it to do so. The first limb of this argument was based on the expiry of the original three year lease between Mobil and the Applicant's predecessor in title and the failure to materialize of the intended subsequent ten year lease. Mobil's continued occupation in this scenario, it was argued, amounts to nothing beyond a tenancy at will, based as it was on a letter of intent rather than a lease proper. It was submitted that such type of tenant has no right to sublet or to transfer possession without the consent of the landlord. Support in this regard was drawn from pages 264 and 265 of Woodfall's Landlord and Tenant (1st ed.).

The second limb of this argument stemmed from the allegation that since the expiry of the initial three year lease, Mobil has not paid any rents to the Applicant as Landlord. Here Mr Ndau, of Counsel for the Applicant, referred to the case of King Flower Limited -vs- Lingazi Farm Ltd Civ. 951 of 1996 (unreported) where he said it was held that occupation without paying rent where there is no formal agreement creates a tenancy-at-will. It was accordingly submitted that at common law such a tenant has no right to sublet and that therefore the plaintiff herein should rightly and properly be restrained from transferring possession of the premises in question to any third party.

Extending the argument the Applicant contended that there being no formal agreement covering the period after the first three years, the plaintiff's continued occupation should proceed to be governed by the terms in the initial three year under lease. In particular reference was made to Article 13 of exhibit "SC2" which prohibited Mobil from sub-letting or parting with possession of the property without the written consent of the landlord. At this point pages 255 and 264 of Woodfall's Landlord and Tenant were referred to in support of this argument.

In answer to the Applicant's demand for the continuation of the interlocutory injunction herein Mobil through Mr Nkhono, of Counsel, in its turn forcefully argued that rather the injunction should be discharged. The first argument taken up was that there is nothing in the advertisement it put up to suggest intent to sublet or transfer the landed premises herein. It was contended that the Filling Station business herein as a franchise, Mobil could allow other people to manage and operate it and that if it was desired to employ a

person in the form of a Manager or Operator Mobil can easily do so without letting go of the possession of the premises. Mobil thus felt that the application for interlocutory injunction in this matter was extremely pre-mature.

Going a step further it was Mobil's argument that the matter not having advanced beyond the stage of advertisement there is no telling what agreement will be entered into if any person's offer is accepted. At this point the Respondent conceded that if it wanted to sublet the premises to anyone attracted by its advertisement it would need the consent of the landlord who legally would not be expected to withhold consent unreasonably. Mobil then accused the Applicant of abusing the process of the court in assuming that Mobil wanted to sublet and rushing for an injunction instead of just enquiring on their intentions before resort to this process.

Mobil next disputed the Applicant's assertion that it is a tenant at will. Confirming that there have been and are a number of cases in court concerning the Filling Station in question, reference was made to Civ. 106 of 2000 Mobil Oil Malawi Limited -vs- F Sacranie (unreported) where it is said that in the course of granting a mandatory injunction Hon. Mwaungulu, J. made a number of pertinent findings. In this case Mr Nkhono argued that the legal rights and obligations in respect of this filling station were fully canvassed and that one of the important findings the court made was that Mobil had a valid 10 year lease due to expire on 30th September, 2001. On basis of the findings in that ruling it was thus submitted that the argument about Mobil being a tenant-at-will is

misguided. In obtaining this interlocutory injunction, it was further argued, that the Applicant is unreasonably interfering with Mobil's operation of its filling station without any legal justification.

Let me first observe that it is clear from the way this case has projected itself to me that there is conspicuous animosity and lack of liaison spirit between Mobil and Malawi Lake Services. I believe when parties are in a Landlord and Tenant relationship or a relationship akin to this, as is the case between these two, the duty to communicate or enquire one from the other is not a one way process but a mutual one. Mobil has clearly been a tenant in the original 3 years and may well still be such for the period between then and 30th September, 2001 at the premises in question and all evidence points at Malawi Lake Services as the successor in title to Mobil's original landlord. The way argument has proceeded in this case however is as if Mobil has no obligations whatever towards this successor in title and that it is only incumbent on the latter when worried about Mobil's conduct on the plot to make an inquiry before it can take any legal step. If the parties indeed stand in the position of relationship of Landlord and Tenant or its equivalent with each other I do not honestly see why Mobil, as a tenant or equivalent of a tenant, even if for more than a decade now, should not even feel a scintira of obligation or courtesy to share its plans and to volunteer its intentions with its landlord especially if such plans are liable to raise eyebrows, if only to avoid being misunderstood and/or being querried or sued. I thus certainly do not buy the argument which suggests that the

obligation in this case only lay on the Applicant, before it could seek an injunction, to enquire what the true intentions of Mobil were in fashioning out the advertisement they put up. Mobil itself, I think, could have forestalled both the possible inquiry which it claims should have taken place and the process for injunction if, assuming it indeed had no harmful intentions, it allayed the landlord's fears in advance vis-a-vis the true aim of the advertisement.

Leaving this aside the compound question before me is whether the interlocutory injunction already granted herein should be allowed to continue until trial of the action or whether it should be dissolved or discharged at this stage. It is to be borne in mind that the only tenancy concerning this plot on which both the parties have no misgivings is the initial three year one from 1988 to 1991.

As regards the 1st October, 1991 to 30th September, 2001 tenure of relationship the parties are certainly not at ad idem with each other regarding the exact relationship they have so far enjoyed or suffered and even as regards who is owing what obligation to who in the material period of time. Further, owing to the mutual suspicion which the parties appear to passionately harbour against each other and also due to the diametrically opposed views which they seem to hold as regards which party has what rights on the property, currently Mobil's continued occupation of the plot in question is the subject of challenge in litigation in multiple cases. Indeed it is quite plain now that if it were not for grace of force of injunction Mobil may well already have been evicted from the plot. Added to this is the fact that the uncertain 10 years relationship conteplated by the parties at the outset is has now reached its sunset and was in fact already in its last 10 months or so when the plaintiff surprised the Applicant with the advertisement now subject- matter of injunction. As matters stand therefore this advertisement was only adding to what was already a complicated and volatile situation. Against this background I do not find it surprising why the Applicant had to feel so sensitive when this advertisement came up. With litigation in the air with a number of cases at various stages of advancement and with injunctions and counter-injunctions balancing the precarious relationship between the various stakeholders in the plot, it was, I think, to say the least, quite provocative of Mobil to go to the papers and put the very subject- matter of these conflicting interests "up for grabs" by members of the public.

Looking at the advertisement itself I can hardly believe it to be one looking for a Manager or Operator of the business on behalf of the plaintiff. If that was the case I am sure the advertisement could have well appeared in the nature of a declaration of existence of a vacancy. On the contrary the advertisement appeared to be positively fishing out for someone who would take over and run the filling station independently, hence the blowing of the trumpet on the advantages attending the filling station in question including "impeccable service reputation" which appears to me to be an advertisement of the existence of the goodwill the successful Applicant would benefit from. In case, however, Mobil are sincere in their plea that all they had were innocent intentions in putting up this advertisement and nothing in the nature of subletting the property, all I can say is that the construction they are putting on the advertisement would

not be so obvious to the ordinary reasonable man. It accordingly strikes me that Malawi Lake Services Limited were justified in being alarmed by this advertisement and in taking the steps they took to protect their interests.

I have already indicated earlier that when this case and others like it finally get tried it will be judicially determined what exactly the relationship was between the parties herein in the 10 years now expiring that was not crowned with any formal lease agreement. What is clear, however, is that whether or not their relationship was one of a tenancy at will or a proper tenancy, both parties herein are well agreed that if Mobil were to sub-let or transfer occupation of the plot in question to a third party it would definitely need the written consent of the landlord. This being the case if, as I have feared above, the advertisement amounted to a threat to the Applicant's landlord rights, then the Applicant cannot be faulted for taking steps to restrain Mobil in its endeavours. I would thus tend

to think that the restraint secured must remain in force until the action is duly determined with appropriate pronouncements on the rights of the parties against each other.

In case I be accused of turning a blind eye against the findings of my brother Judge Hon. Mwaungulu, J. in Civ.106 of 2000 in Mobil Oil (Malawi) Limited -vs- F. Sacranie (unreported) let me mention that I have fully read the decision that was cited. I observe that it was a decision on the grant of a mandatory injunction to Mobil in that case. As I understand it such injunctions are normally granted to a party that has an unusually strong and clear case. A fact that still remains however is that even if such injunction is granted it does not mean that the case is finally decided. The case normally still has to go ahead for both parties in the case to present their positions and the court remains free either to decide in line with the mandatory injunction it granted or to back-track and decide counter to it. I therefore do not think that the findings my brother Judge made in that order have the finality ascribed to them as the order sought after at that stage was for purposes of interlocutory and not final relief between the then quarrelling Mobil and F. Sacranie. I thus cannot take it that it was finally determined that Mobil had a valid ten year lease and was not a tenant-at-will as that point was only going to be finally clear on delivery of judgment at the very end of the case. I dare add that until that case could progress to finality that decision bound Mobil and F. Sacranie. I however have reservations about treating that decision as licensing Mobil to deal with its landlord, even if only a successor landlord, with contempt or impunity. A landlord is a landlord and a tenant is a tenant regardless of length of title and regardless of developments relating to succession in title.

I recall to mind that the usual purpose of an interlocutory injunction is to preserve the status quo pending the determination of the rights of the parties in an action per Note 29/1/2 in Order 29 rule 1 of the Rules of Supreme Court. I also note that the absence of formalisation of lease agreement between Mobil on the one hand and Malawi Railways Limited or its successor in title on the other hand, in regard to the long period of ten years, is the one that gave birth to uncertainty and insecurity among the various parties with interest in the property in question and that this is what led to the chain of suits now in existence. It is my further observation that while the contentious period of 10 years

was progressing towards its end it was, as it were, necessary to maintain a kind of truce between the parties pending judicial determination of the existing actions. I take the view that in this situation when Mobil evinced in the papers its readiness to have the property in question “grabbed” by whoever happened to be the successful applicant, especially at such a late stage in this troubled ten years period, it was rather disturbing the status quo and breaking the “truce” situation that had been reached. All said and done I think my brother Hon. Justice Chimasula Phiri was right in this case to grant the interlocutory injunction he granted herein. I order that this injunction should continue in force until this action is finally determined at the end of the trial and award costs of the application to the Applicant.

Made in Chambers this 4th day of October, 2001 at Blantyre.

A.C. Chipeta

JUDGE