

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
MISC. CIVIL CAUSE NO. 96 OF 2005**

BETWEEN:

PAUL MAKONDE TSA.....APPLICANT

- and -

PORTLAND CEMENT LTD..... RESPONDENT

CORAM: CHIMASULA PHIRI J

Mr Kamunga of counsel for the applicant

Mr Kachere of counsel for the respondent

Mrs S. P. Moyo – court clerk.

ORDER

Having heard the submissions of both counsel and after a thorough reading of the process in this matter I bear in mind that the remedy, which the applicant is seeking of a mandatory injunction order is rarely granted. It must be granted sparingly and in cases where refusal would cause injustice to the party when the matter is finally determined. This means that the applicant's case must be unusually strong to qualify for such a remedy. This is different from considerations that apply to prohibitive injunctions where the sole aim is to preserve the parties **status quo**.

In this particular case, the applicant's studies are sponsored by the respondent. The sponsorship is written and has set conditions. The sponsorship requires the applicant to pass exams for sponsorship to continue. During period of learning he is supposed to observe college regulations and during vacation the applicant is supposed to be on attachment at the respondent's factory in Changanalume or Blantyre. It is expressly provided that during such times the applicant is supposed to observe the disciplinary rules at the place of work. It is equally clear that breach of any disciplinary terms of employment would result in withdrawal of sponsorship.

In the present matter, it is not denied that the applicant was found in possession of bearings in his personal locker at the workshop. It is also clear from the affidavits in opposition that employees were not supposed to keep accessories such as bearings in their lockers except the company stores. Whether what happened in the present case amounts to dishonesty or fraudulent act is a question of fact and cannot be disposed of by affidavit evidence. It requires a trial. Therefore, given this situation it cannot be said that the applicant has an unusually strong and clear case against the respondent to warrant this court to order the respondent to perform a positive act.

I also bear in mind that the respondent's withdrawal of sponsorship does not amount to withdrawal of a place at the learning institution. The applicant is at liberty to source fees through other means. I regret that the applicant's future does not seem rosy. However, this is not an application that can succeed. Each party pays its own costs.

MADE in chambers this 11th day of May 2005 at Blantyre.

Chimasula Phiri

JUDGE