



JUDICIARY

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 1276 OF 2001

BETWEEN:

EDWARD NTHENDAPLAINTIFF

- AND -

VILLAGE HEADMAN NYENGADEFENDANT

CORAM: THE HONOURABLE JUSTICE E. B. TWEA

Mr Mpaka, of the Counsel for the plaintiff

Mr Makiyi, of the Counsel for the defendant

Mrs M Mthunzi – Official Interpreter

RULING

Twea, J

This was an application by the defendants to discharge an interlocutory injunction obtained ex – parte on 5th September, 2007 and to oppose the inclusion of more defendants.

When the case was called it transpired that the first defendant who was the deponent had passed away. Counsel for the defendants confirmed that the personal estate of the deceased would continue the action. The 4th defendant then swore an affidavit on which the application proceeded.

I note that this action commenced by summary procedure for possession of land under Order 113 r 2 of the Rules of the Supreme Court. In the Course of the proceedings the Court accepted that it is not a proper case to proceed by way of summary procedure and ordered that it proceeds by as if commenced by writ.

It is on record that the matter was heard and completed. The case was reserved for judgment before Justice Ansah before her appointment as Attorney General. The plaintiff subsequently obtained an injunction ex – parte against the defendants. Further, few more defendants were added. It is not clear how the other defendants were added – it would appear that there is no court order for amendment of the writ to include new defendants. In the absence of any evidence to the contrary, the amendment was irregular. I have also noted that apart from adding new defendants the plaintiff took out other defendants. This too was irregular.

The irregular amendments are hereby declared null and void, the action should proceed as commenced with the plaintiff and the four defendants. Should the plaintiff wish to amend if, then he should do so regularly.

On the injunction, I note from the record that the District Commissioners for Blantyre and Chiradzulu and officials from the Ministry of Lands have been involved in the case. There are issues of non – consent and district boundaries involved. There is no consensus on exclusive use of the land which, in any case, has been disputed. The District Commissioners and lands officials do acknowledge prior use and suggest redemarcation.

An injunction is discretionary remedy. The court must determine whether there is a right to protect and if so whether damages would suffice.

In the present case the defendant have averred that they had been on the land before the lease, that there were no consultations when the lease was being granted and that the lease affects people who were already on the land. They would suffer irreparable damage if they are moved out before the determination.

In my view the balance of justice lies in the allowing the parties to continue using the land as they are now. No party should start new projects or extend

the use of the land that they hold or use in any way as to affect the status quo until determination of this case.

Costs to the defendants.

Pronounced in Chambers this 11th day of December, 2007 at Blantyre.

E. B. Twea
JUDGE