



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 463 OF 2001**

BETWEEN:

FANWELL BITON MAGULU APPLICANT

-and-

HILDA SAOPA..... RESPONDENT

CORAM: Hon. Justice M.L. Kamwambe
Mr Makhaira of counsel for the Applicant
Mr Chayekha of Counsel for the Respondent
Mrs Kamuloni, Official Interpreter

JUDGMENT

Kamwambe J

This is an application for an order of injunction under Order 29/1/5 of the Rules of Supreme Court. The Applicant is seeking from this court that the Defendant be restrained from continuing to take possession of farm land and from employing people to pluck tea from the said farm land.

The brief facts of the case are that about six years ago an uncle to the Applicant sold the land at Namona village, T/A Njema in Mulanje District to the Respondent. The sale was witnessed by the traditional authorities and others. The Respondent started to tend to the land and effect the necessary improvements. She has been selling tea leaves produced from the land to Tea Authorities.

The Applicant claims ownership of the land may be by virtue of the fact that the land belonged to his father. It is alleged that the uncle was a mere caretaker of the land who sold the land without the knowledge of the Applicant. The Respondent has refused to be given back her money by Applicant's uncle.

The law pertaining to injunctions is that:-

- (a) Plaintiff must establish that he has a good arguable claim to the right he seeks to protect.
- (b) This is not the time to decide conclusively on the rights of the parties on affidavit evidence. It is enough if the Plaintiff shows that there is a serious question to be tried.
- (c) If the damages would be an adequate remedy then the Court must not grant an order of injunction.
- (d) The grant or refusal of an injunction is a matter for exercise of the Court's discretion on the balance of convenience.

Damages will be said not to be sufficient if the Respondent is unlikely to pay them or if the wrong is irreparable, or outside the scope of pecuniary compensation or if damages be very difficult to assess.

Despite the fact that the Applicant has not shown how he owns the land I think there is an arguable case. The Plaintiff/Applicant is son to the original owner. However, damages in this case would be an adequate remedy if it transpired that the Respondent was in the wrong. But it would not be easy to cause the Respondent to pay damages since he has a good and **bona fide** right of claim to the land for the time being after he bought the land with the knowledge of local leaders. The person to pay damages if they arose in this case is the uncle who is not a party herein. Definitely if the situation turned otherwise, it would be the same uncle to pay

damages to the Respondent who was a **bona fide** purchaser without notice of the Applicants right. The uncle is not a man of means and not capable of paying damages at any stage.

Since the Respondent is already using the land and taking care of it, in my view it is a lesser evil to maintain the status quo than to disallow her working and tending to the land pending the determination of the substantive action. In view of this I am prompted to dismiss this application with costs. It is so decided.

Made in Chambers this 22nd day of October, 2008 at Chichiri, Blantyre.

M.L. Kamwambe
JUDGE