



JUDICIARY

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 2276 OF 2007**

BETWEEN:

**COLLINS NANSETAAPPLICANT
- AND -**

CARLOS TCHINGARESPONDENT

CORAM: THE HONOURABLE JUSTICE E. B. TWEA
Absent, of the Counsel for the applicant
Absent, of the Counsel for the respondent
Mrs V. Nkhoma – Official Interpreter

RULING

Twea, J

This is an inter – parte summons for the discharge of an injunction granted to the respondent on 17 October 2007.

The facts in issue are that the applicant and the respondent have a chieftaincy dispute. This dispute has undergone several adjudicative processes. During this time, the applicant sued the Ministry of Local Government, seeking judicial review of its decision concerning the chieftaincy in dispute. The Attorney General on behalf of the Zomba

District Assembly, the Ministry of Local Government and on her own behalf, then entered into a consent judgment declaring the applicant the rightful heir to the chieftaincy. No reference was made to the on going dispute between the parties. The respondent obtained an injunction in order to have the consent order set aside and have the matter properly determined. Now the applicant seeks to have the injunction set aside.

The summons was set down for hearing on 13 December, 2007. The documents on record indicated that the notice of adjournment was stamped with the respondent's legal house stamp but there was no affidavit of service. This Court heard the applicant and reserved the ruling.

The gist of the applicant contention was that his duty was to sue the Ministry of Local Government which is responsible for the chieftaincy. He did not consider it his duty to consult the respondent.

While the applicant would be right in the ordinary course of things, he was procedurally wrong to bring a parallel suit on the issue without disclosing the on going wrangle. In the same vein the Attorney General's decision to enter into a consent judgement with one of the contesting parties without hearing the other was irregular. The legal effect was that it decided the chieftaincy wrangle in favour of one party without hearing the other. It is no defence to say that the applicant only exercised his right to sue. He was under a duty to disclose all material facts affecting the chieftaincy.

On the facts before me, it would not be justiciable, nor equitable, to allow the applicant the fruits of his manoeuvres. Injunctions are equitable remedies. He who comes to equity must come with clean hands.

I therefore deny the application to discharge the application. I have noted that the respondent did not appear, but this does not necessarily translate in favour of the applicant. I am still obliged to consider the merits of the case, which I have.

The application is dismissed. Costs be in the cause.

Pronounced in Chambers this 24th day of January 2008, at Blantyre.

E. B. Twea
JUDGE