

MALAWI JUDICIARY  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY

MISCELLANEOUS CIVIL CAUSE NO. 40 OF 2015

BETWEEN

JUREDA DUDAH .....APPLICANT

-AND-

MATHEWS CHIKAPA.....RESPONDENT

CORAM: THE HON. JUSTICE J. NRIVA

Mr Alide, of Counsel for the applicant

Mr Master, of Counsel for the respondent

Ms Deliwe Mtegha, Official Interpreter

RULING

The parties to this application are Jureda Dudah and Mathews Chikapa.

Jureda Dudah intends to commence an application for committal for contempt of court. The other side objects to the proceedings for contempt.

Mr Chikapa obtained an order of injunction against Ms Dudah. The order was restraining Ms Dudah from carrying out construction works on, as he put it, his (*i.e.*, Mr Chikapa's) land. Later, Ms Dudah applied for discharge of the injunctive order.

In the application for the committal proceeding, Ms Dudah argues that Mr Chikapa has constructed a structure on the land. Ms Dudah takes this as an act of contempt of court.

Counsel for Mr Chikapa, Mr Master, is of the view that there is no order that his client is disobeying. Counsel for Ms Dudah, Mr Alide, argues that when the Court discharged the order of injunction, that Mr Chikapa obtained, that meant Mr Chikapa had no claim to the land. For him to make developments on the land, so goes the argument, Mr Chikapa is in contempt of court.

There are two orders. One is for an injunction at the instance of Mr Chikapa. At the instance of Ms Dudah, the other order removed the order of Mr Chikapa. As I see it, there is no order for Mr Chikapa to do or not to do anything on the land. The order that Ms Dudah obtained was to set aside the order that Mr Chikapa obtained. That order, that the Court vacated, was against Ms Dudah. In any event, I do not see that order as requiring Mr Chikapa to do or to refrain from doing anything.

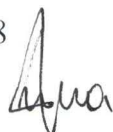
The two orders in this dispute do not settle the issues as to who is entitled to the land. The injunctive order that Mr Chikapa obtained does not imply that the land was his. The Court did not settle that matter. Likewise, the discharge of the order did not settle the dispute as to who has to do what on the land.

Therefore, I do not perceive Mr Chikapa to have done anything against a Court order. I do not see anything warranting contempt of court proceedings.

I, therefore, agree with the arguments from Mr Chikapa that the application for contempt is not well-founded. If, as Mr Master argues, Ms Dudah has issues with Mr Chikapa making developments on the land, she could commence her own proceedings and not depend on her discharge of the order that Mr Chikapa obtained.

I agree that this is not a proper case for contempt of court. I dismiss the motion for an order for committal for contempt of court. I dismiss the motion with costs.

MADE the 17<sup>th</sup> day of September, 2018



J NRIVA

JUDGE