

JUDICIARY
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY (CIVIL DIVISION)
CIVIL CAUSE NO. 1027 OF 2021
(Before Honourable Justice Kenyatta Nyirenda)

BETWEEN

SHADRECK NKOSI CLAIMANT

AND

KAMPHINDA GOWA NYASULU DEFENDANT

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA

Mr. Zimba, Counsel for the Claimant

Mr. Chiume, Counsel for the Defendant

Mr. Henry Kachingwe, Court Clerk

RULING

Kenyatta Nyirenda, J.

This is my Ruling on an inter-partes application by the Claimant for an order of interlocutory injunction restraining the Defendant from trespassing, encroaching or engaging in activities inconsistent with the Claimant's rights over Plot Number LC49/6/134 in Area 49 Sector 6 in Lilongwe District pending the full and final determination of the substantive case herein.

The application is supported by sworn statement made by Mr. Teddie Ngaunje. The sworn statements reads:

- "3. On 28th March, 2014, the Applicant upon application for a commercial plot was offered Plot Number LC49/6/134 by Lilongwe City Council at the sum of MK6, 901,751.25. The Applicant duly paid the sum of MK6, 901,751.25 in consideration for the aforesaid plot. Attached are copies of the offer letter from Lilongwe City Council and a copy of the receipt acknowledging payment, they are marked as **TN1** and **TN2** respectively

4. *On 7th November, 2016, the Applicant received a letter from Lilongwe City Council assuring him of his claim on Plot Number LC49/6/134 and stating that the Respondent had no claim to the aforesaid plot and if anything, he was an illegal developer. Attached and marked TN3 is a copy of the letter.*
5. *On 30th June 2017, a Court Order was issued declaring the Applicant as legal owner of Plot Number LC49/6/134. A copy of the Court Order is hereby attached and marked TN4 for reference.*
6. *The Respondent in blatant disregard of the Applicant's title and rights over the land has illegally entered the land and begun grading the land. The Respondent has further begun erecting structures on the Applicant's land.*
7. *Unless further developments upon the land are restrained by an order of this court the Applicant will be deprived of his right to the land."*

The Defendant is opposed to the application and he has filed with Court a sworn statement in opposition and the same is couched in the following terms:

- "3. *That in or around 2013 I started occupying a piece of land situated on Plot Number LC46/6/134 in Area 49, Sector 6 in Lilongwe District in the Republic of Malawi.*
4. *I began to develop on the said piece of land located on Plot Number LC 46/6/134 in Area 49, Sector 6, I built a perimeter wall around the said piece of land, I further built structures on the said piece of land and I began to start civil works on the site.*
5. *After occupying the land for several years, in the year 2015 I made an application to the Lilongwe City Council for the regularization of Plot Number LC46/6/134 in Area 49, Sector 6.*
6. *On 29th September, 2015 Lilongwe City Council responded to my application for the regularization of Plot Number LC46/6/134 in Area 49, Sector 6, in which they quoted me a fee of MK8,981,546.00 in order for the process of regularization to be complete. Attached and exhibited hereto is a copy of Lilongwe City Council Response marked "KGN 1".*
7. *That I made payment of MK5,000,000.00 to Lilongwe City Council on the 9th of February, 2016 as a part payment to my application for regularization of Plot Number LC46/6/134 in Area 49, Sector 6. Attached and exhibited hereto is a copy of the receipt marked "KGN 2".*
8. *Ever since the year 2015 I have been enjoying peaceful use of my property and that I have began to develop on the said piece of land on Plot Number LC46/6/134 in Area 49, Sector 6.*
9. *That it was only after 6 years of me using the said Plot Number LC46/6/134 which is situated in Area 49, Sector 6, that the Applicant decided to take legal action against me claiming to be the true owner of the said property.*

10. *That the Applicant has no legal interest and no legal rights over Plot Number LC46/6/134 which is situated in Area 49, Sector 6.*
11. *That the actions of the Applicant are illegal and aim to deprive me of my Constitutional rights under Section 28 Constitution of Malawi.*
12. *I have heavily invested in the development of Plot Number LC46/6/134 in Area 49, Sector 6 over a long period of time.*
13. *That I have a lot of employees on the said Plot Number LC46/6/134 in Area 49, Sector 6, building and developing the said piece of land. That if operations of the building were to be stopped by the Court Order of Injunction Granted by this Honourable Court, a lot of people will have to be retrenched."*

An interlocutory injunction is a temporary and exceptional remedy which is available before the rights of the parties have been finally determined. Order 10, r. 27, of the CPR provides that a court may grant an injunction by an interlocutory order when it appears to the court that (a) there is a serious question to be tried, (b) damages may not be an adequate remedy and (c) it shall be just to do so.

Having carefully read and considered the sworn statements and the submissions by Counsel, it is very clear to me that this case raises triable issues, with the obvious one being issue relating to the ownership of the land in dispute. Both parties claim to be the rightful proprietors of the land in dispute


On the question of damages, there is really little to say on the matter. It is trite that every piece of land is of particular and unique value to the owner and damages are an inadequate remedy and, in any case, damages would be difficult to assess: see **Julie F. Mulipa v. Mr. and Mrs. Bibiyani and Others unknown, Land Cause No. 105 of 2016 (unreported)**, wherein Tembo, J., while quoting **Nanguwo v. Tembenu and another, HC/PR Civil Cause No. 451 of 2013 (unreported)**, stated as follows:

"What this Court wishes to observe is that land is inherently unique and therefore damages are not an adequate remedy where the same is dealt with adversely. Therefore, the issue on adequacy of damages is ordinarily out of the question in relation to applications for injunction in relation to land."

As regards the balance of justice, sometimes it is best to grant an order of interlocutory injunction so as to maintain the status quo until the trial and at other times, it is best not to impose any restraint on the defendant: see the cases of **Hubbard v. Vosper [1972] 2 Q.B. 84** and **Henry Malista & Others v Village Headman Sakhama (Enock Mututu), Civil Cause no.66 of 2018**). See also **American Cyanamid case**.

In the present case, the unchallenged evidence is that there is already a High Court Order issued by the Commercial Division, Lilongwe Registry, in Commercial Case No. 156 of 2017 declaring the Claimant as the legal owner of the land in dispute: see paragraph 5 of the sworn statement by Mr. Teddie Ngaunje. This being the case, the preservation of the status quo favours the Claimant. In the premises, the order of interlocutory injunction is granted, as prayed.

Pronounced in Chambers this 21st day of December 2021 at Lilongwe in the Republic of Malawi.



Kenyatta Nyirenda
JUDGE