



IN THE HIGH COURT OF MALAWI
REVENUE DIVISION
LILONGWE DISTRICT REGISTRY
JUDICIAL REVIEW NUMBER 12 OF 2021

BETWEEN:

VENKATTA NYAMALA AND OTHERS

CLAIMANTS

-AND-

MALAWI REVENUE AUTHORITY

DEFENDANT

CORAM: HONOURABLE JUSTICE JOSEPH CHIGONA

MR. NYANDA, OF COUNSEL FOR THE CLAIMANTS

MS. FRANSISCO, OF COUNSEL FOR THE DEFENDANT

MR. FELIX KAMCHIPUTU, COURT CLERK

ORDER

[1] This is the court's order on the application by the Claimant for an injunction. The application is supported by a sworn statement and skeleton arguments. Suffice to mention that there is a sworn statement in opposition and skeleton arguments.

[2] In his sworn statement, Siva Sankar Reddy Meegada, who is the General Manager of the 4th Claimant depones that on 17th June 2021, the defendant's officers raided residential premises of Mr. Sureth Kumar Reddy at Pacific Village in Area 9 in the City of Lilongwe and the factory premises of Indo African Distilleries Ltd in the City of Mzuzu, purporting to execute certain search warrants in respect of suspected criminal wrongdoing on the part of Sureth Kumar Reddy and Likki Manshanker Reddy trading as Global Beverages Ltd and Indo African Distilleries Ltd. A copy of the search warrant is marked **SNR 1**.

[3] The deponent avers that during the search, the defendant's officers seized the claimants motor vehicles including Eicher 10.55 Registration number BW 7094 belonging to the 4th Claimant as shown by the registration certificate marked as **SNR 6**. The deponent avers that no reason has been furnished for the seizure of these items despite the fact that they were not covered by the search warrant.

[4] The deponent also submits that these seized goods are not in any way connected with any live criminal proceedings and the defendant has not communicated its intention to use them as evidence in any criminal trial or proceeding. The deponent avers that it is abuse of the court process for the defendant to seize the said motor vehicles without finalizing whatever claims or demands against the Claimant.

[5] During the hearing of the application, counsel for the Claimant submitted that there are triable issues in this matter warranting the granting of the injunction as sought. He submitted that one of such triable issues is whether the defendant legally seized various goods inclusive of motor vehicles assorted flavours from the claimants pursuant to search warrant in respect of suspected wrong doing on the part of Indo and Globe Beverages considering that these are different entities. Counsel submitted that the seizure notice is unlawful and accordingly there are serious issues to be resolved by this court.

[6] On damages, counsel for the Claimants submitted that damages would not be an adequate remedy as the issues in the present matter delve into constitutional rights of the Claimants to own property and engage in economic activity. Counsel submitted that as these are constitutional rights, damages would not suffice.

[7] Counsel went further to submit that balance of convenience favours granting of the injunction in favour of the Claimants since the issues are constitutional in nature. In conclusion, counsel prayed for the granting of the injunction on conditions the court considers just and fair in the circumstances.

[8] As alluded to above, there is a sworn statement in opposition and skeleton arguments adopted by counsel in their entirety. In her sworn statement, Eleanor Banda, Senior Tax Investigations Officer, submitted that they indeed conducted a search on the premises of Globe Beverages Limited for various customs offences outlined in the sworn statement in paragraph 3 (d). The deponent avers that BW 7094 belongs to Universal Beverages and Distribution Ltd. The deponent avers that Mr. Likki ManShanker Reddy is the Director of Universal Beverages and Distribution Ltd. The deponent further avers that Public Officer of Global Beverages Ltd and a Director of Indo African Distilleries Ltd. Likki ManShanker Reddy is a co-accused in a tax evasion case in criminal case No. 741 of 2021.

[9] The deponent denies any seizure of the Claimants flavours and that the seized motor vehicles which are subject to criminal proceedings in Criminal Case Number 741 of 2021 in the Chief Resident Magistrate Court sitting in Lilongwe. The deponent avers that these seized motor vehicles would be important for forfeiture proceedings at the end of the criminal proceedings should the accused persons be found guilty.

[10] During the hearing of the application, counsel for the defendant commenced by reminding the court that the issues in the present application were before the court already in another matter where the court ordered opening of Indo Distilleries Ltd. Counsel submitted that the same search warrant for Indo Distilleries Ltd was the one used to seize the motor vehicles in the present matter. The defendant through counsel submitted that residential premises were also searched where motor vehicles belonging to managers were seized on suspicion that they belonged to the accused person.

[11] The Claimant through counsel submitted that the Road Traffic Directorate was involved to verify the ownership of the said seized motor vehicles. That exercise, as per counsel, resulted in the release of a motor vehicle belonging to the 1st Claimant while the rest of the motor vehicles remained under seizure as they were deemed to be connected to the accused person. To counsel, the issue of whether these motor vehicles are connected to the accused person is a triable issue.

[12] On damages, counsel submitted that damages are an adequate remedy. Counsel submitted that though the granting of an injunction is in the discretion of the court, she prayed for conditions to be attached to such a decision.

[13] In reply, counsel for the Claimants submitted that damages to be paid belong to the public pulse and that the defendant is merely a trustee. He therefore prayed for the release of the motor vehicles.

THE LAW ON INJUNCTION AND DISPOSAL OF THE APPLICATION

[14] Order 10 rule 27 of the Courts (High Court) (Civil Procedure) Rules 2017, hereinafter to be referred to as Civil Procedure Rules provides for the threshold to be complied with in applications for interlocutory injunctions. Pursuant to Order 10 rule 27 of the Civil Procedure Rules, an interlocutory injunction may be granted where there is a serious question to be tried, where damages may not be an adequate remedy and where it shall be just to do so and that the order may be made unconditionally or on such terms or conditions as the court considers just. The threshold in Order 10 rule 27 of the Civil Procedure Rules is a codification of the principles for the granting of injunctions as enunciated in the case of **AMERICAN CYANAMID CO. V ETHICON LTD**¹.

[15] The first issue to be addressed by this court is whether in the present matter, there is a serious question to be tried. In other words, the court has to be convinced that the Claimant has a good arguable case on the right he seeks to protect.

[16] Reverting to the present case, it seems to me that there is no dispute at all on the existence of a serious question to be tried as the defendant through counsel during the hearing of the application agreed that there are serious issues to be tried. One of such serious issues is to do with the legality of the defendant's actions to seize the defendant's goods/motor vehicles with full knowledge that the same do not belong to Globe Beverages Limited. This is a triable issue requiring further enquiry at trial.

[17] On damages, I am of the considered view that since we are dealing with constitutional rights of the Claimants to own property and engage in economic activity, it is difficult, in my considered

¹ [1975] A.C. 396; [1975] 2 W.L.R. 316

view, to quantify damages for such constitutional rights. Further, I am of the considered view that the issues surrounding the seizure of the motor vehicles are complex that damages cannot address. It is my finding therefore that damages are not adequate remedy in these circumstances.²

[18] Lastly, I have to consider whether it is just to grant the injunction. In doing so, I have to weigh whether the balance of convenience or justice favours the granting of the injunction.³ I am of the considered view that granting of the injunction in this matter will be just. I am fortified in my reasoning bearing in mind that the defendant during the hearing of the present application had difficulties to justify seizure of the motor vehicles based on suspicion of wrong doing of somebody who is not the owner of the motor vehicles. Counsel for the defendant informed the court that she was not sure why the defendant's officers seized the motor vehicles. In the sworn statement in opposition to the present application, the deponent avers that the motor vehicles were seized in anticipation of forfeiture proceedings against the accused person in Criminal Case 741 of 2021 at Chief Resident Magistrate Court sitting in Lilongwe.

[19] I am at pains to accept the argument of the defendant in these circumstances. One would have thought that the issues to do with forfeiture could have been dealt with once the criminal proceedings in the lower court are concluded and necessary applications or orders for forfeiture are made. Further, as submitted by the Claimant, those motor vehicles are not subject of those criminal proceedings in the lower court or any other criminal proceedings, a fact admitted by the defendant through counsel during the hearing of the present application.

[20] Based on the foregoing, I am of the considered view that it is just to grant an injunction in these circumstances on condition that the motor vehicles should not be sold or hired out or offered as a security until disposal of the matter. I so order.

[21] Each party to bear its own costs

MADE IN OPEN COURT THIS 28TH DAY OF JANUARY 2022 AT LILONGWE HIGH COURT.


JOSEPH CHIGONA
JUDGE

² Mkwamba V Indefund [1990] 13 MLR 244

³ Kanyuka V Chiumia, Civil Cause Number 58 of 2003 (High Court) (unreported).

See also Zuneth Sattar and Ashok Nair V Nation Publications Limited and Blantyre Newspapers Limited, Civil Cause Number 431 of 2021, (High Court) (unreported).