



**IN THE HIGH COURT OF MALAWI**

**COMMERCIAL DIVISION**

**BLANTYRE REGISTRY**

**Commercial Cause No. 187 of 2023**

**BETWEEN**

PRECIOUS MAKATANJE.....CLAIMANT

**AND**

PRESS PROPERTIES LIMITED.....DEFENDANT

Coram: **Manda, J**

Kapoto for the Claimants

Khaki for the Defendant

M. Kachimanga Court Clerk/Interpreter

**RULING**

This was the claimant's application for the continuation of an injunction which the claimant had obtained from this court on the 7<sup>th</sup> of November, 2023. The defendant opposed the application.

The brief facts of this case are that the claimant has been a tenant in a house owned by Malawi Telecommunication Limited and managed by the defendant since 2016. It was the claimant's argument that when he went to occupy the house it was dilapidated and that as such he made an offer to buy it. At the time the defendant apparently declined the claimant's offer to buy the house, instead the parties went into a tenancy agreement under which the claimant was paying MK78, 000 rentals per month. The defendant also apparently refunded the claimant the direct expenses he incurred in renovating the house.

On or about the 9<sup>th</sup> of October, 2023, the defendant offered to sell the house to the claimant for MK28, 000, 000. The defendant further indicated that a deposit of MK14, 000, 000 was to be paid by the 12<sup>th</sup> of October, 2023. According to the claimant, he accepted the offer but that he sought reconsideration on the payment of the deposit, arguing that the period he was given was too short. This is where disagreement arose between the parties.

In opposing this application, it was the defendant's argument that the claimant actually made a counter offer and that as such and by law, the claimant is to be deemed to have rejected the defendant's offer by changing the terms of the offer. In this regard, the defendant stated that they rejected the claimant's counter offer and that they only offered the claimant an extension of up to 31<sup>st</sup> October, 2023 to pay the deposit, which apparently the claimant did not accept. Rather it was stated that the claimant just proceeded to deposit the sum of MK7, 000, 000 into the defendant's account on the 31<sup>st</sup> of October, 2023 and indicated that he would pay the balance in the next several weeks.

Noting that there was no clear commitment from the claimant, the defendant stated that they cancelled the offer as they had instructions from MTL to expedite the sale. The defendant then also informed the court that they did make attempt to refund the MK7, 000, 000 which the claimant had deposited into their account as well as subsequent amounts which the claimant deposited on 15<sup>th</sup> November, 7<sup>th</sup> and 8<sup>th</sup> December, 2023, respectively.

From the foregoing, it was the defendant's argument that there was no agreement with the claimant for the claimant to enforce as the claimant rejected the offer that was made to him by making a counter offer. The defendant thus submitted that there is no serious question to be tried as by law the claimant rejected the offer by making a counter offer and therefore cannot be awarded specific performance. The defendant relied on the cases of *Routledge v Grant* [1828] 4 Bing and *Hyde v Wrech* (1840) 3 Beav 334.

In terms of damages, it was the defendant's submission that the defendant would not be able to pay the defendant damages since the claimant has failed to pay the deposit for the purchase price of the property and also that the claimant has constantly defaulted on his rental obligations. On the other hand, it was the defendant's argument that they are a company of good standing and that they would be in a position to pay the claimant damages. The defendant thus opined that it would not be just to maintain the injunction.

The parties did also deal with the issue of the claimant being evicted but I will not dwell much on the same except to state that it was the defendant's argument that they would be within their rights to evict the claimant on account that the claimant has been defaulting on his rentals. The defendant thus dismissed the claimant's pleas that it would be unfair and unjust for the claimant to be forced out of the house.

These were the facts of this case and I will now deal with the legal aspects

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The principles for granting an injunction have been well presented in this case and I need not repeat them. The main question in this instance though is that is there a serious issue to be tried? For me to answer this question, I must of course make a determination as to whether there was an enforceable agreement between the parties. This question would mean that I have to deal with the merits of the case. As stated in *Mulipa v Mr and Mrs Buliyani and others* Land Cause Number 105 of 2015, Courts grant an interim injunction where the applicant discloses a good arguable claim to the right he seeks to protect. At this point it is not for the Court to determine the merits of the case but consider whether the claim establishes a triable issue. The Court only, to a limited extent, investigates the merits to a limited extent only, especially, considering the circumstances and the facts, the claimant's cause of action has substance and reality. as noted in *Mangulama and Others v Dematt* Civil Case No. 893 of 1996 (unreported), it is not for the court at this point to delve into the merits of the case by examining the evidence.

In the context of this matter, it has been argued by the defendant that the claimant's counter offer invalidated their offer and that this is a matter of law. Agreeing with the defendant would mean that I will have to make a determination at this point that the claimant did indeed make a counter offer which invalidated or cancelled the defendant's offer. Further it should also be observed that there is an assertion by the claimant that they did not in fact make a counter offer but rather that they simply made a request for consideration of certain terms in the defendant's offer. Thus there is a question of whether the claimant made a counter offer or that he simply made a request is a matter which can only be determined at trial after considering the evidence. On this note I agree with the decision in *Mwapasa and Another v Stanbic Bank Limited & others* HC/PR Civil Cause No. 110 of 2003 (unreported) in which case it was stated as follows-

*"a Court must at this stage avoid resolving complex legal questions appreciated through factual and legal issues only trial can avoid and unravel."*

As for the adequacy of damages, it should be noted that this matter involves land. In *Mulli Brothers Limited v Ecobank Malawi Limited* Civil Cause No. 660 of 2013, Mwaungulu, J (as he then was) said that damages may not sufficiently remedy issues concerning land. The judge opined as follows:

*"Damages, in so far as realty is subject matter of an interim injunction, are an inadequate remedy. Pieces of land, even if contiguous, are not the same and are inherently unique that damages are not adequate remedy and courts, therefore, issue*

of injunctions on realty (*Sikawa vs. Bamusi and Another* (2013) Land Cause No. 53 (HC) (PR). It is unnecessary, therefore, to consider, on the principles in *American Cyanamid Company Ltd and Ethicon Ltd*.

Further, in *Mulipa v Mr and Mrs Buliyani and others* Land Cause 105 of 2015, the Court said:

*“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. See Nanguwo v Tembenu and another civil cause number 451 of 2013 (High Court)”*

The principle of the uniqueness of land and the difficulty in assessing damages has been endorsed by the Supreme Court of Appeal in *Village Headman Kungwa Kapinya & Others v Chasato Estates Limited* MSCA Civil Appeal No. 75 of 216 (unreported), I thus need not stress it any more. Suffice to say that it is now settled law that when it comes to land, damages would not be an adequate remedy.

The final question is then what does the justice of this matter require at this point in time? Of course having made a determination that there is a serious question to be tried and that damages would not be an adequate remedy, it would follow that the balance of convenience would be in favour of maintaining the status quo. In this regard, it is my considered view that it is just and equitable that the injunction should be maintained until the determination of this matter. I do of course understand that there is some urgency on the part of the defendant. In view of this, I would direct that the matter should be set down for mediation within 21 days.

Costs will be in the cause.

Made in Chambers this...25<sup>th</sup>.....day of .....January.....2024



K.T. MANDA  
JUDGE

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