



**REPUBLIC OF MALAWI
MALAWI JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 94 OF 2018**

BETWEEN:

ABDUL GAFFAR ISMAIL MALIDA.....CLAIMANT

AND

MONSOOR RASHID KASIM.....DEFENDANT

Coram: The Honourable Justice J. N'riva

Mr Salimu Of Counsel For The Claimant

Mr Chinkango Of Counsel For The Defendant

Mrs Mtegha Court Clerk

RULING

This is the Defendant's application seeking an order discharging a freezing injunction that was granted by this Court.

The Claimant filed a without-notice application for a freezing injunction restraining the Defendant from dealing with Title Number Chichiri 814. I granted the order as prayed.

The Defendant's application is based on the fact that the Claimant failed to disclose material facts which, the defendant argues, if they were disclosed, the Court would not have granted the order. The Defendant contends that the Claimant obtained an order that was already set aside by the High Court.

The Claimant does not dispute the fact that the Court set aside the order he relied on but asserts that he had no notice of the order.

The position at law is that it is always open to an opposing party, where an interlocutory injunction was granted without notice to them, to apply to the Court for its discharge on the ground that there was no frank and full disclosure of all material matters of both fact and law. (see Justice Kenyatta Nyirenda's ruling in *Abdul Gaffar Ismael Malida v Moonsoor Rashid Kasim* Civil Cause No. 333 of 2017 citing *The State v. Malawi Communications Regulatory Authority, ex-parte Capital Radio Malawi Limited and Joy Radio Limited* HC/PR Judicial Review Cause No. 29 of 2011, unreported).

It has been held, in the case of *Brink's Mat Ltd v Elcombe and Others* [1988] 1 WLR 1350 at 1356f, that the duty of the applicant to make a full and frank disclosure of material facts entails that:

1. Material facts are those which it is material for the judge to know in dealing with the application as made.
2. Materiality is to be decided by the court and not by assessment of the applicant or his legal advisors.
3. The applicant must make proper inquiries before making the application.
4. The duty of disclosure applies not only to material facts known to the applicant but also to any additional facts which he would have known if he had made such enquiries.

5. The extent of the enquiries which will be held to be proper and therefore necessary must depend on all the circumstances of the case.
6. If material non-disclosure is established the court will be astute to ensure deprivation of an ex-parte injunction or any relief obtained thereby.
7. Whether the fact complained of is of sufficient materiality to justify or require immediate discharge of the order without examination of the merits depend on the importance of the fact to the issues and that non disclosure was innocent is an important consideration but not decisive.

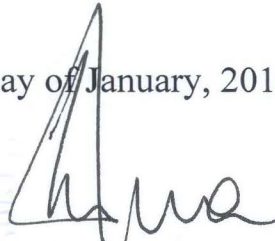
The law is well settled. A person, who makes an application to the Court, without notice to the other party, is under an obligation to the Court to make the fullest and possible disclosure of all material facts. The duty of disclosure applies not only to material facts known to the applicant but also to any additional facts which he would have known if he had made enquiries. The extent of the enquiries which will be held to be proper and therefore necessary must depend on all the circumstances of the case-see *Abdul Gaffar Ismael Malida vs Moonsoor Rashid Kasim*.

In the present case, Counsel for the Claimant argues that the matter in question was brought as a miscellaneous application and it would be unfair to expect the Claimant to be aware of an order of a proceeding that he was not aware of. However, this Court is of the view that had the Claimant made proper inquiries on the case file in question, he would have found that the said order had been set aside. This Court surely would not have granted the freezing injunction if it had been made aware that the order upon which the Claimant relied on had been set aside.

This Court agrees with the Defendant that since this matter was based on a matter that was already dismissed, the Claimant should have proceeded against the Defendant by way of appeal to the Supreme Court.

This Court is satisfied that the Defendant has established that the Claimant failed to disclose material facts, which ought to have been known if proper inquiries had been made. I therefore discharge the freezing injunction. The Defendant's application succeeds.

Pronounced in Chambers this 28th day of January, 2019 at Blantyre.



J N'RVVA

JUDGE