

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 2929 OF 2008

BETWEEN:

MR. R. VINYO.....PLAINTIFF

AND

RAPHAEL ANTONIO & 10 OTHERS.....DEFENDANT

CORAM: THE HON. JUSTICE MR. S.A. KALEMBERA

Mr Chayekha, of Counsel for the Plaintiff

Mr Balakasi, Official Interpreter

RULING

Kalembera J

This is an order on the Plaintiff's application for a mandatory injunction order compelling the Defendants and all their relations occupying near Mwalawoyera Mountain in Ntcheu District being part of the land belonging to the Plaintiff under deed number 82856 to vacate from the said piece of land with costs. The application is supported by an affidavit sworn by Rex Vinyo, the Plaintiff, as well as skeletal arguments. The Defendants have filed no response.

The brief facts of this matter are that the Plaintiff is the only remaining Director of Chigonamikango Cotton Ginners Limited (CCGL). CCGL owned a piece of land situate near Mwalawoyera Mountain in Ntcheu and during the time the estate was

under receivership the Defendants encroached on the land and built their houses there in or about early 2000. That at some point due to non-payment of ground rates, government took away the land from the estate and upon the Plaintiff's knowledge, he applied for the said land. He was later granted a lease for the land. The Defendants are preventing him from cultivating the land and have since refused to vacate the land.

The court has jurisdiction upon an interlocutory application to grant a mandatory injunction directing that a positive act should be done to repair some omission or to restore the prior position by undoing some wrongful act but it is a very exceptional form of relief—(refer **Bonner v. Great Western Railway Company**[1883] 24 Ch.D 1 at p.10. In the case of **Alvares v Mudaliar** 14 MLR 7(HC) at pp.15-16 Mbandawire, J quoted with approval Lord Upjohn in the case of **Redland Bricks Ltd. v Morris and another** [1970] AC 652 at pp.665-666 where he set out the following general principles:

“The grant of a mandatory injunction is, of course, entirely discretionary and unlike a negative injunction can never be ‘as of course.’ Every case must depend essentially upon its own particular circumstances. Any general principles for its application can only be laid down in the most general terms:

1. *A mandatory injunction can only be granted where the Plaintiff shows a very strong probability upon the facts that grave damage will accrue to him in the future.....It is a jurisdiction to be exercised sparingly and with caution, but, in the proper case, unhesitatingly.*
2. *Damages will not be a sufficient or adequate remedy if such damage does happen. This is only the application in a general principle of equity.*
3. *Unlike the case where a negative injunction is granted to prevent the continuance or recurrence of a wrongful act, the question of cost to the defendant to do works to prevent or lessen the likelihood of a future apprehended wrong must be an element to be taken into account:
(a) *where the defendant has acted without regard to his neighbour's rights, or has tried to steal a march on him or has tried to evade the jurisdiction of the Court or, to sum it up, has acted wantonly and quite unreasonably in relation to his neighbor, he may be ordered to repair the wanton and unreasonable acts by doing positive work to restore the status quo even if**

the expense to him is out of all proportion to the advantage thereby accruing to the Plaintiff. As illustrative of this see Woodhouse v Nowry Navigation Co (1898) 1 IR 161;

- (b) but where the defendant has acted reasonably, though in the event wrongly, the cost of remedying by positive action his earlier activities is most important for two reasons. First, because no legal wrong has yet occurred (for which he has not been recompensed at law and in equity) and, in spite of gloomy expert opinion, may never occur or possibly only upon a much smaller scale than anticipated. Secondly, because if ultimately heavy damage does occur, the plaintiff is in no way prejudiced, for he has his action at law and all his consequential remedies in equity.*
- 4. If in the exercise of its discretion the court decides that it is a proper case to grant a mandatory injunction, then the court must be careful to see that the defendant knows exactly in fact what he has to do and this means not as a matter of law but as a matter of fact, so that in carrying out an order he can give his contractors the proper instructions.”*

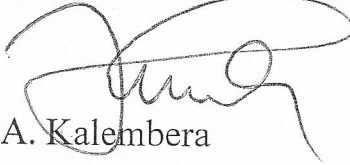
In the matter at hand, the Plaintiff has shown and proved, that he has ownership of the land in question. Exhibit “RV 1” has been exhibited to that effect. The Defendants have not even challenged this application. Thus, the evidence by the Plaintiff, which uncontroverted, demonstrates that the Defendants are encroaching on the Plaintiff’s piece of land. The Plaintiff has therefore got a good arguable claim to the right he seeks to protect.

I am mindful that a mandatory injunction is a discretionary remedy which can only be granted, inter alia, where the Plaintiff shows a very strong probability upon the facts that grave damage will accrue to him in the future.....It is a jurisdiction to be exercised sparingly and with caution, but, in the proper case, unhesitatingly. In the matter at hand I am satisfied that refusal of this application will lead to irreparable damage to the Plaintiff and that damages would not be a sufficient remedy.

All in all, the balance of convenience lies in favour of granting the order applied for in favour of the Plaintiff. Consequently I hereby grant the Plaintiff’s application for a mandatory injunction; and direct that the Defendants must be compelled to vacate the Plaintiff’s land with immediate effect.

Costs are for the Plaintiff.

PRONOUNCED this 8th day of August 2019, at the Principal Registry, Blantyre.

A handwritten signature in black ink, appearing to read 'S.A. Kalembera', written over a horizontal line.

S.A. Kalembera

JUDGE