



REPUBLIC OF MALAWI
 IN THE HIGH COURT OF MALAWI
 CIVIL DIVISION
 PRINCIPAL REGISTRY
CIVIL CASE No. 778 OF 2022

BETWEEN:

JOHN CHIKANKHENI..... CLAIMANT

-AND-

MR. KAZEMBE..... 1ST DEFENDANT

-AND-

MR. NKHUTABASA 2ND DEFENDANT

-AND-

HANDA CHAFULUMIRA 3RD DEFENDANT

-AND-

BENEDICTO CHAFULUMIRA 4TH DEFENDANT

-AND-

NDAZIONA CHABWERA 5TH DEFENDANT

CORAM: THE HONOURABLE JUSTICE JACK N'RIVA
 Counsel for claimant; Mrs Penama
 Counsel for the 1st & 3rd Defendant: Mr. Ngwata
 Mrs. D Nkangala, Court Clerk

RULING

The claimant sought an order of interim injunction to stop the defendants from using and continuing to develop some pieces of land, the subject of the claim herein. The further order sought was to stop the defendants from interfering with claimant's right to use his piece of land. The disputed pieces of land emanate from a deceased estate. The claimant and the third defendant both claim to be beneficiaries of the estate.

The first defendant bought a piece of land from the third defendant.

The other defendants did not attend the hearing of the application. Nor did they respond to the application. It is quite apparent that some of the defendants are purchasers of the land while others are “co-claimants” to the deceased estate.

I remind myself that this is not a point at which to deal with the substantive dispute in the matter. The Court regards the evidential issues to a limited extent.

From the synopsis of the sworn statements there is a dispute over the land. The claimant and the third defendant claim to be the beneficiaries of the land. The third defendant sold the piece of land to the first defendant. The first defendant has been plying a hardware business on the piece of land since 2019.

Order 10 rule 27 of Courts (High Court) Civil Procedure) Rules 2017, provides that the Court may grant an order of interim injunction where it appears to the Court that there is a serious question to be tried, that damages may not be an adequate remedy and that it shall be just to do so.

As to whether there is a serious question to be tried, it is a question of considering whether or not the claimant has a dispute worth adjudicating on. As to damages being inadequate, it is a question of whether the claim would be remedied in damages. It is further a question whether the defendant could pay the damages. That is to say if the claimant could be compensated monetarily, the Court ought not to grant the order of interlocutory injunction. See *Amina Daudi t/a Amis Enterprise v. Sucoma* Civil case No. 391 of 2003. It has to be appreciated that damages would be a deficient remedy where the claimant’s or defendant’s losses are difficult to compute.

As to the interest of justice, it is a question of weighing whether the order would do justice or harm to the parties. The Court has to make an order that is just or convenient. It is called balance of convenience. Of course, it has to do more with inconvenience. The claimant has to show that the inconvenience caused to her or him would be greater than that may be caused to defendant. Should the inconvenience be equal, the claimant would suffer. The claimant must show that the comparative mischief from the inconvenience arising from withholding the order would be greater than would arise if it is granted. In some cases, balance of convenience is maintained by preserving the preceding state of affairs. In this matter, it is seemingly the case that there is a serious question, a prima facie case, worth the Court’s determination.

In my view, the main issue is not about there being a serious question as well as the adequacy of damages. It is about balance of convenience.

The order sought is to stop the defendants from using and developing the piece of land in issue. The order sought has the effect of making a final order In the matter. Perhaps that order should be preserved for, if at all, the final finding and determination of the Court.

Further, I do not find that the order sought would produce a just result.

For example, the first defendant states that he has constructed a hardware shop and that he has been running the business for some time. The third defendant deponed that she too has been on the land for some time. I believe justice would be served if the the first defendant continues operating his business. Likewise, it would not be in the interest of justice or convenient to stop the third defendantaa from using the land in question.

Therefore, the Court will not make an order stopping the defendants from using the piece of land they are currently using. The Court orders that they should continue using the piece of land. However, the Court orders that:-

- (a) The defendants should not make further development on the land until the matter is determined.
- (b) The defendants shall not prevent the claimant from using the land he is claiming provided that the land is not in use by any of the defendants.

Costs shall be in the cause.

MADE this 13th day of September, 2022



J. N'RIVA
JUDGE

