



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 216 OF 2020

BETWEEN:

EUNICE GRACE NACHAMBA

1st CLAIMANT

ELMA ELIZABETH NACHAMBA

2nd CLAIMANT

AND

JEAN PATRICIA NACHAMBA SAPA

1st DEFENDANT

EUGINE WHEELER

2nd DEFENDANT

TITO NKHOMA

3rd DEFENDANT

CORAM: JUSTICE M.A. TEMBO,

Kosamu, Counsel for the Claimants
Thindwa, Counsel for the Defendants
Mankhambera, Official Court Interpreter

ORDER

1. This is this Court's order on the defendants' application for an order setting aside an order of interlocutory injunction made under Order 10 rule 27 of the Courts (High Court) (Civil Procedure) Rules 2017.
2. By their instant application, the defendants seek the setting aside of an order of injunction granted without notice to the defendants, restraining the

defendants from controlling and developing that part of the deceased estate comprising a piece of land in relation to which the claimants and the 1st defendant are administrators and which the 2nd and 3rd defendant bought from the 1st defendant without the knowledge of the claimants. The application is contested by the claimants.

3. The facts as gathered from the various sworn statements sworn by the parties show that the claimants and the 1st defendant are siblings. Upon the demise of their parents some years ago, the claimants and the 1st defendant as beneficiaries of their parents' estate, obtained letters of administration in relation to a piece of land situated at Chigumula in Blantyre which comprises the deceased estate herein. The letters of administration were obtained in 2018. The deceased estate has not yet been distributed.
4. The 1st defendant obtained land certificates over the land in the names of each of the three administrators. She then sold two pieces of land to each of the other defendants.
5. The claimants' case on the application for an order of injunction against the defendants indicated that the 1st defendant obtained the land certificates fraudulently and without the knowledge of the claimants. And that the 1st defendant then proceeded to sell the land in question without the knowledge of the claimants. They therefore sought the order of injunction to stop the 1st defendant and the other defendants from controlling the disputed pieces of land and development of the said pieces of land pending the determination of the claimants' case.
6. The case of the defendants is that the injunction obtained without notice was obtained by suppression of material facts. As correctly submitted by the defendants, suppression of material facts will result in the setting aside of an order of injunction obtained without notice, if the court would not have granted the order had the facts in question been disclosed. See *Ex parte Muluzi and Tembo* [2007] MLR 304 (HC).
7. The defendants asserted that the claimants failed to disclose that they had also been exploiting the estate to the exclusion of the 1st defendant by letting out some of the land for farming, letting out a building on the farm and also farming on the said land.
8. The claimants replied that, in fact, parts of the deceased estate land had been sold with the joint consent of the 1st defendant. Further, that the letting out of

the farm building was aimed at raising some money to maintain the farm and fend off trespassers. The defendants did not dispute that part of the deceased estate land has ever been sold for her benefit as well with the joint consent of the claimants.

9. The 1st defendant then asserted that whatever part of the land she sold herein was going to be her share of the deceased estate upon distribution of the same and that in that case the injunction is academic as there is no status quo to be preserved. She asserted that the injunction is an abuse of the court process.
10. The defendants therefore contended that the injunction should be set aside for three reasons, namely, that there is no danger to the status quo that requires preservation, that there is no serious issue to be tried, that the balance of convenience tilts in favour of discharging the injunction and that there was suppression of material facts warranting the setting aside of the injunction.
11. The parties made submissions on the application at hand which this Court has considered in arriving at its decision herein.
12. This Court is aware of the applicable law on interlocutory injunctions as submitted by the parties. The court will grant an interim injunction where the claimant discloses a good arguable claim to the right he seeks to protect. The court will not try to determine the issues on sworn statements but it will be enough if the claimant shows that there is a serious question to be tried. See Order 10 rule 27 (a) Courts (High Court) (Civil Procedure) Rules 2017.
13. The result is that the court is required to investigate the merits to a limited extent only. All that needs to be shown is that the claimant's cause of action has substance and reality. Beyond that, it does not matter if the claimant's chance of winning is 90 per cent or 20 per cent. See *Mothercare Ltd v Robson Books Ltd* [1979] FSR 466 per Megarry V-C at p. 474; *Alfred Dunhill Ltd v Sunoptic SA* [1979] FSR 337 per Megaw LJ at p. 373.
14. If the claimant has shown that he has a good arguable claim and that there is a serious question for trial this Court, then next has to consider the question whether damages would be an adequate remedy on the claimant's claim. See Order 10 rule 27 (b) Courts (High Court) (Civil Procedure) Rules 2017.
15. Where damages at common law would be an adequate remedy and defendant would be able to pay them, an interlocutory order of injunction should be refused, irrespective of the strength of the claimant's claim. See *Mkwamba v Indefund Ltd* [1990] 13 MLR 244.

16. Where damages are an inadequate remedy the court will consider whether it is just to grant the injunction. See Order 10 rule 27 (c) Courts (High Court) (Civil Procedure) Rules 2017. This will involve weighing whether the balance of convenience or justice favours the granting of the interim order of injunction. See *Kanyuka v Chiumia* civil cause number 58 of 2003 (High Court) (unreported); *Tembo v Chakuamba* MSCA Civil Appeal Number 30 of 2001 both citing the famous *American Cyanamid Co. v Ethicon Ltd* [1975] 2 WLR 316.
17. In determining the instant application for injunction, this Court must first determine whether on the sworn statements the claimants have disclosed a triable issue.
18. The claimants' sworn statement shows that there are triable issues, namely, whether the deceased estate must be distributed according to law in view of the existing letters of administration obtained by the claimants and the 1st defendant.
19. The 1st defendant contends that this whole matter is academic since upon administration of the estate she will still get the land she has sold as part of her share of the estate and that her breach of the laws on administration is inconsequential. This is far from the truth.
20. As asserted by the claimants, the law must be followed to ensure that administrators of the deceased estate agree on the distribution of the deceased estate to all eligible beneficiaries. It would be utterly disorderly and unlawful for one among several administrators to act singularly as the 1st defendant has done in this case and start disposing of the deceased estate. Contrary to the assertions by the 1st defendant, it is not proved that the share of the estate disposed by the 1st defendant is lesser than her share of the deceased estate. That uncertainty stands to imperil the status quo which is that the estate must be fairly distributed amongst the beneficiaries of the deceased estate with the involvement of all the administrators of the deceased estate who happen to be beneficiaries as well.
21. The violation of the letters of administration by the 1st defendant through unilateral alleged fraudulent creation of land certificates and selling of part of the land cannot be inconsequential. It is a recipe for chaos and makes the order of this Court comprised in the letters of administration vain. Courts are not in the business of granting orders like letters of administration in vain. Parties

who seek court orders, like the 1st defendant herein, must therefore abide by the letters of administration and not act as if they never obtained such letters which carry certain duties and responsibilities. It therefore comes as a surprise to this Court that the 1st defendant thinks that the letters of administration she obtained from this Court can be rendered academic by her own unlawful conduct. That is untenable.

22. The claimants have therefore disclosed a good arguable claim to the right they seek to protect, namely, ensuring that the estate is determined according to law by the administrators that are lawfully constituted in relation to the estate in question herein.
23. The next question that has to be considered by this Court is the question whether damages would be an adequate remedy on the claimants' claim. See Order 10 rule 27 (b) Courts (High Court) (Civil Procedure) Rules 2017.
24. It has been held authoritatively that breach of a limited grant of letters of administration was outside the scope of pecuniary compensation. See *Phiri v Phiri and another* [2013] MLR 176. Similarly, abuse of the deceased estate administration powers by the 1st defendant herein in the absence of an injunction may present a scenario that may not be adequately compensated in damages. Argument to the contrary by the defendants is untenable, namely, that the claimants have not explained how the sale of the part of the land will impact the claimants' share. The point is that there is an allegation that the land certificates used by the 1st defendant are allegedly fraudulent and cannot be used to substantiate her claims. Unilateral actions by the 1st defendant in that regard are inherently detrimental to the other administrators and any other beneficiaries of the deceased estate. Damages would not be an adequate remedy.
25. The last issue for consideration is whether it is just to continue the injunction. See Order 10 rule 27 (c) Courts (High Court) (Civil Procedure) Rules 2017. This will involve weighing whether the balance of convenience or justice favours the continuation of the interim order of injunction. See *Kanyuka v Chiumia* civil cause number 58 of 2003 (High Court) (unreported).
26. This Court considers it just to maintain the order of injunction pending determination of the instant action so that the deceased estate is preserved and administered fairly after the issues between the parties are resolved. This will protect the rights of all the beneficiaries to the deceased estate, which

beneficiaries include the claimants and the 1st defendant. The 1st defendant cannot be allowed to unilaterally dispose of the deceased estate on the pretext that she is disposing of a share of her estate that smaller than her entitlement under the estate. Arguments by the defendants to the contrary are not compelling.

27. On the last point that the injunction must be set aside on account of the claimants' failure to disclose the material fact that they also benefitted from the estate to the exclusion of the 1st defendant, this Court finds that there is no such failure to disclose a material fact. In fact, the claimants' sworn statement shows that there was joint disposal of part of the land herein for the benefit of the claimants and the 1st defendant which is undisputed. And then, the claimants have shown that they took steps to finance protection of the land in question from encroachment and waste which the 1st defendant erroneously alleged was a benefit to the claimants to her exclusion.
28. It is the 1st defendant who appears not to have stated matters fully as she never disclosed that she benefitted from other earlier joint sales of part of the land comprising the deceased estate. This case therefore does not fall with the nondisclosure envisaged in the case of *Ex parte Muluzi and Tembo* [2007] MLR 304 (HC).
29. The defendants' application to set aside the order of interlocutory injunction is accordingly declined with costs.
30. The endorsement on the court file shows that a summons and initial direction were filed. However, both documents are not on the record. It is rather puzzling. The claimants will have to supply these documents for the record. There is actually no response and defence, as well, on the record. The defence must look into that as well. There is no endorsement that those were filed.
31. The foregoing notwithstanding, this Court is of the view that the present matter is not suitable for mediation and that, if necessary, it must be escalated to a scheduling conference as soon as is practicable and should be ready for determination sooner rather than later.

32. Otherwise, to avert costs, the administrators are encouraged to distribute the deceased estate herein according to law as soon as practicable and get the issues resolved with regard to that part of the estate that the 1st defendant has sold to the other defendants herein. The claimants cannot afford to stay idle and not do their duty to distribute the estate according to law because that eventually invites unnecessary wrangles amongst the beneficiaries. This is an important active case management directive that counsel for the administrators must impress upon the administrators to avert unnecessary costs of taking this matter to trial.

Made in chambers at Blantyre this 26th August, 2021.



M.A. Tembo
JUDGE

