

Dr. Abdul Majeed v Abdullah Hassan Chikukula

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Trouble Kalua
Cause Number:	Commercial Cause Number 84 of 2025
Date of Judgment:	September 02, 2025
Bar:	K. Kamwendo, Counsel for the Claimant S.A. James, Counsel for the Defendant

Head Notes

Civil Procedure – Injunctions – Interlocutory injunction – Serious question to be tried – Not present when parties' affidavits agree on core facts.

Civil Procedure – Injunctions – Interlocutory injunction – Adequacy of damages – Damages are adequate remedy for a claim concerning a motor vehicle.

Civil Procedure – Injunctions – Interlocutory injunction – Balance of convenience – Tilts towards defendant when claimant has failed to honour payment agreement.

Law Of Torts – Conversion – Elements – Lawful retention of goods under an agreement – No cause of action for conversion when payment condition not met.

Civil Procedure – Striking Out – Frivolous and vexatious proceedings – Action struck out when statement of claim discloses no reasonable cause of action.

Civil Procedure - Costs - Costs award - Costs follow the event - Successful defendant awarded costs against claimant.

Summary

The Claimant sought an order for the immediate delivery of a motor vehicle and damages for conversion against the Defendant, and had obtained a without-notice interlocutory injunction. The Defendant subsequently applied to the High Court, Commercial Division, for an order to discharge the injunction and dismiss the entire matter. The dispute arose from an agreement for the Defendant to transport the Claimant's motor vehicle from South Africa to Malawi. Both parties agreed that the Defendant would be paid for this service and that the Defendant would hold the vehicle as security until payment was made. While the Claimant claimed to have been ready and willing to pay, and the Defendant claimed to have been continually seeking payment, the Court noted that no payment had in fact been made, and the vehicle remained in court custody after a prior court order.

The principal questions before the Court were whether the injunction should be discharged and whether the Claimant's suit should be struck out. The Court held that the injunction should be discharged and the proceedings struck out. The Court's reasoning was two-fold. First, on the injunction, the Court applied the principles from

American Cyanamid Co v Ethicon Limited and found that the Claimant had no serious question to be tried, that damages would be an adequate remedy, and that the balance of convenience tilted heavily in the Defendant's favour. Second, the Court found that the Claimant's main claim for conversion disclosed no reasonable cause of

action. The Defendant's continued possession of the vehicle was justified under the parties' agreement as the payment condition had not been met. Consequently, the Court set aside the injunction, ordered that the vehicle be returned to the Defendant, and struck out the proceedings as frivolous, vexatious, and an abuse of the court process. The Claimant was also ordered to pay the Defendant's costs.

Legislation Construed

Subsidiary Legislation

Order 10 rule 1, 3, and 27 of the **Courts (High Court) (Civil Procedure) Rules, 2017**.

Judgment

1. The Claimant commenced the present proceedings against the Defendant claiming the immediate delivery of motor vehicle registration number GTP544 Ford, damages for conversion, a permanent injunction restraining the Defendant from possessing, using or in any way dealing with the Claimant's said motor vehicle and costs of the action.

2. The current application is for an order discharging an injunction and dismissing the matter taken out by the Defendant under Order 10 rules 1 and 3 of the Courts (High Court) (Civil Procedure) Rules, 2017 [CPR 2017]. However, a brief background of where we are coming from herein will help to put the eventual directions we are about to give, in perspective.

3. Together with the Summons herein the Claimant took out a 'without notice' application for an interlocutory injunction restraining the Defendant either by his agents, relatives and/or servants or whosoever acting on his behalf from possessing, using or in any way dealing with the Claimant's motor vehicle registration number GTP544 Ford. The application was taken out under Order 10 rule 27 of the CPR 2017 and was supported by the sworn statement of Dr Abdul Majeed. The injunction was granted on 14th March 2025 with a direction that a 'with notice' application for the continuation thereof be filed within 21 days by the Claimant, which direction was duly complied with by the Claimant. The 'with notice' application was set down for hearing on 23rd May 2025. On the said date, counsel for the Defendant filed a notice of appointment of legal practitioners and sought the hearing to be adjourned in order for him to file a response to the application on behalf of the Defendant. Counsel for the Defendant also prayed for an order that pending the hearing of the 'with notice' application, the vehicle be surrendered into the custody of the Court. Upon hearing both parties the Court made the following directions:

1. THAT the vehicle which is the subject matter of these proceedings, GTP544 Ford be surrendered into the custody of the Court by Tuesday 27th May 2025 for safe custody until the determination of this application or any further order of the Court.
2. THAT the Defendant shall file his sworn statement and skeleton arguments herein by Friday, 30th May 2025.
3. THAT the hearing of the application shall be adjourned to Friday, 20th June 2025 at 11:30am.
4. THAT meanwhile the interim order of injunction granted herein continues to subsist subject to the order for the surrender of the vehicle into Court made above.

The vehicle was duly surrendered to the Court by the Defendant. However, the

Defendant did not file his sworn statement and skeleton arguments in opposition by the 30th of May 2025 as directed. Instead, the Defendant took out his own inter partes application for an order discharging/vacating the injunction herein and dismissing the matter. This application was also, initially set down for the 20th June 2025.

4. As can be seen, the two applications are different. So, whilst, in terms of the injunction, the order that can be made in the two applications would have the same effect (being either a discharge or a continuation of the said injunction) the two application cannot simply be exchanged, one for the other, without an order from the Court. They are not one and the same. As it turns out therefore, the 'with notice' application for the continuation of the injunction remains unprosecuted. And there are no documents in opposition to that particular application from the Defendant.

5. Be that as it may, it was the essence of the Defendant's application that he entered into an agreement with the Claimant to transport the Claimant's motor vehicle herein from the Republic of South Africa to Malawi upon which he would be paid. The Claimant has not paid for the services as agreed despite his continuous efforts to have the Claimant pay. He continues to keep the car as security for the money he is owed. In his sworn statement in opposition to the application, the Claimant claims that he has always been ready and willing to pay for the service rendered by the Defendant but that the Defendant has been refusing to accept the money. It is a rather interesting scenario. We have on the one had a Claimant that says he has always been ready and willing to pay the Defendant and get his car but that the Defendant has been refusing to accept payment. On the other we have a Defendant that says he has been continuously pushing the Claimant to pay per agreement and get his car and yet the Claimant has been refusing to do so. Yet we are here in Court. The car remains

here, in the Court's custody, whilst no payment has either been offered nor accepted, in reality. Clearly one of the parties is being very economic with the truth. We will not go into determining which one.

5. The law on the subject of injunctions is settled. The principles governing the grant or refusal of interlocutory injunctions that emanated from the celebrated American *Cynamide Co v Ethicon Limited* (1975) AC 393 decision have been applied with approval in our Courts times without number. The Court will grant an injunction where the Claimant has a good arguable claim to the right he seeks to protect. The Court must be satisfied of the existence of a serious question to be tried. The Court will also consider whether damages would be an adequate remedy. Where these would be adequate and the Defendant would be in a position to pay them, an injunction will almost certainly be refused. (see *Mkwamba v Indefund* (1990) 13 MLR 244). The Court must also decide where the "balance of convenience" lies. It is not, we are aware, the Court's duty to determine the merits of the case at this stage. The Court must avoid disposing of the matter on the sworn statements before it only. That is for the trial Court. In dealing with the question of "balance of convenience" in *Commercial Cause Number 467 of 2022 Ejide Hakizimana v National Bank of Malawi Plc and Henry Masina* my sister Judge Namonde, J quotes, with approval, the dicta of Lord Denning in *Hubbard v Vosper* [1972] 1 AllER 1032 at 1029 where he says:

'in considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the strength of the claim but also to the strength of the defence, and then decide what is best to be done. Sometimes it is best to grant an injunction so as to maintain the status quo until the trial. At other times it is best not to impose any restraint on the defendant but leave

him free to go ahead.'

6. Order 10 rule 27 of the CPR 2017 captures the essence of the applicable principles when it provides:

"The Court may, on application, grant an injunction by an interlocutory order when it appears to the Court –

- (a) there is a serious question to be tried;
- (b) damages may not be an adequate remedy; and
- (c) it shall be just to do so,

and the order may be made unconditionally or on such terms or conditions as the Court considers just.

7. We note that the parties agree that there was an agreement between the parties herein for the transportation of the vehicle from the Republic of South Africa to Malawi. The service was to be paid for once the vehicle was transported to Malawi. The vehicle was duly transported into the country. Payment for the service has not been done to date, over two and half years later. Yet, it is the Claimant that comes to Court seeking the immediate delivery to him of the motor vehicle. We do not see any triable issue worth exploring at trial. We do not think the Claimant has a good arguable claim to the right he seeks to protect for which an order of injunction could be sustained.

8. Before an injunction can be granted it must also be shown that damages would not be an adequate remedy per Order 10 rule 27 (b) CPR 2017. The relationship between the parties herein is based on an agreement the breach of which entitles the innocent party to a claim in damages. The subject matter herein is a motor vehicle whose value

is capable of being ascertained. Any loss that would be suffered by the Claimant is capable of being quantified in money terms. We do not see any peculiar loss that can possibly be suffered by the Claimant for which damages would not adequately compensate him. This, on that account too, is not a proper case in which an injunction can be sustained.

9. The Court grants an order for injunction if it is “just to do so”. That whole balancing act and the exercise of the Court’s discretion is rolled into this provision. The Court must decide what is just in the circumstances between the grant or refusal of the injunction. We are of the considered opinion that the balance of convenience tilts heavily in favour of discharging the injunction. It would not be just to restrain the Defendant from keeping custody of the car when the agreement on payment has not been honoured by the Claimant. The agreement between the parties was clear. The Claimant was to keep the blue book whilst the Defendant was to keep the car until payment is finalised. If indeed the Claimant has always been ready and willing to pay, we wonder why he simply hasn’t made the payment when he has in his possession the Defendant’s contacts as well as bank details. The balance of convenience herein tilts in the Defendant’s favour.

10. The Claimant’s main claim, per the statement of case, is in conversion. He alleges that the Defendant has failed to deliver the motor vehicle herein and has since converted it to his own use. The position, from the sworn statements and as conceded by both parties however, is that the Defendant was keeping the car out of agreement between the parties. The agreement was for him to keep the car until full payment. The payment has not been made. The condition upon which he is obligated to release the car has not been satisfied. His continued keeping of the car cannot amount to

conversion in the circumstances. The Defendant has justification at law to continue to exercise dominion over the Claimant's property. The Claimant cannot be entitled to the immediate possession of the motor vehicle in the absence of a payment to the Defendant for the service rendered in terms of the agreement. Clearly, the Claimant's statement of case discloses no reasonable cause of action. It is vexatious and borders on an abuse of the process of the Court. We must, as we hereby do, strike out these proceedings as prayed for by the Defendants.

11. In conclusion, therefore, the order for an injunction restraining the Defendant either by his agents, relatives and/or servants or whomsoever acting on his behalf from possessing, using or in any way dealing with the Claimant's motor vehicle registration number GTP544 Ford granted on 14th March 2025 herein is hereby set aside. The motor vehicle shall forthwith be released from the custody of the Court to the Defendant to be kept by him in accordance with the agreement between the parties and these proceedings are hereby struck out for being frivolous, vexatious and an abuse of the process of the Court.

12. The Claimant is condemned to pay to the Defendant costs of these proceedings to be assessed by the Registrar if not agreed between the parties. We so order.

Pronounced in chambers at Lilongwe this 2nd day of September 2025.