

IN THE HIGH COURT FOR ZAMBIA

2012/HP/265

HOLDEN AT LUSAKA

(Civil Jurisdiction)

BETWEEN:

**FOUNDATION FOR DEMOCRATIC
PROCESS REGISTRERED TRUSTEES**

Plaintiff

and

DR ALEX MWAMBA NG'OMA

1st

Defendant

NALUKUI MILAPO MUYANGANA

2nd

Defendant

Before the Hon. Lady Justice F. M. Lengalenga this 4th day of October, 2012 in chambers at Lusaka

For the plaintiff : Mr. L. Mwanabo - Messrs L. M. Chambers

For the defendants : Mr. Mumba S. Kapumpa - Messrs Mumba S. Kapumpa Advocates

R U L I N G

Cases cited:

- 1. SHELL AND BP (ZAMBIA) LTD v CONIDARIS & OTHERS (1975) ZR 174 at p 176**
- 2. MOBIL (Z) LIMITED v MSISKA (1983) ZR 86**
- 3. HARTON NDOVE v ZAMBIA EDUCATION COMPANY OF ZAMBIA LTD (1980) ZR 184**

**4. TURNKEY PROPERTIES LTD v LUSAKA WEST
DEVELOPMENT CO. LTD (1984) ZR 85**
**5. GRANADA GROUP LTD v FORD MOTOR COMPANY LTD
(1972) FSR 103**

This is plaintiff's application for an order of interim injunction to restrain

the 1st and 2nd defendants from holding themselves out as President and National Secretary of the plaintiff organisation. The application is supported by an affidavit sworn by Jacob Goma who deposed that he is the National Secretary of the plaintiff organisation whilst the 1st and 2nd defendants are former President and National Secretary of the plaintiff organisation respectively who were expelled from the organisation and from their positions by way of a Board resolution in accordance with the plaintiff's constitution. The minutes of the Board meeting held on Saturday 14th January, 2012 were exhibited as "JG1" together with "JG1/1", a copy of the said constitution. The deponent stated further that he and Mr. Shepherd Chilombe were duly elected as President and National Secretary respectively and that the defendants were also duly notified of their expulsions by letters issued to them which detailed the grounds of expulsion. Copies of the said letters were exhibited as "JG2" and "JG3". Jacob Goma deposed further that the defendants did not appeal against the expulsions to the National Convention within thirty (30) of the expulsion as required under the constitution but they responded with utter disregard of the contents of their respective letters and sheer lack of respect of the resolutions passed by the

Board of Directors. The defendants' and their lawyer's letters were exhibited as "JG4" and "JG5". The deponent further stated that the defendants have continued to hold themselves out as the plaintiff's President and National Secretary respectively and to interfere with the plaintiff's operations and property, thereby perpetuating confusion and division within the plaintiff organisation and the general public including the donor community.

Jacob Goma stated that the defendants' actions of defiance against the Board resolution would injure the reputation of the plaintiff in the eyes of the co-operating partners and the public at large if they are not restrained from purporting to be the plaintiff's office holders and spreading falsehood against the plaintiff's officials and bringing the plaintiff into public scandal, odium and embarrassment.

The defendants on 17th April, 2012 filed into court a joint affidavit in opposition which was sworn by Alex Mwamba Ng'oma and Nalukui Milapo Muyangana who deposed that they are respectively President and National Secretary of the plaintiff organisation having been duly elected as such on or about 21st January, 2011 at the plaintiff's National Convention at Andrew Motel in Lusaka in accordance with the plaintiff's constitution. They deposed further that Jacob Goma is not and has not been a National Secretary of the plaintiff and that the defendants are still

the President and National Secretary of the plaintiff and that the so-called 'Board Resolution' by a group of individuals with no constitutional mandate is null and void and of no effect and cannot be used to expel duly elected office bearers. The defendants deposed further that they have from the time of their election, selflessly, sacrificially and objectively defended the plaintiff and made decisions that are in the plaintiff's best interests and that even after their purported expulsion, they have continued to enhance and jealously protect the plaintiff's interests.

The defendants further stated that the claim for an injunction is totally misplaced as it is the illegally constituted 'National Executive Committee' which should be restrained either by itself or by its agents or whomsoever from holding itself out as such.

An affidavit in reply was filed on 24th April, 2012, in which Jacob Goma more or less restated the contents of his affidavit in support.

Both the plaintiff and the defendants filed into court skeleton arguments and list of authorities on 17th and 24th April, 2012 respectively and I have considered the said arguments. In consideration of the said arguments, I wish to support the plaintiff's contention that the defendants' joint affidavit

contravened the provisions of Order 5 Rule 15 of the Rules of the High Court, Cap 27 of the Laws of Zambia by containing extraneous matters or information by way of legal arguments and prayer, in paragraphs 9, 10, 14, 22, 23 and 24 and that the same should be expunged. I have accordingly expunged the offensive paragraphs.

Learned senior Counsel for the defendants relied on a number of decided cases which set out principles that guide the court on what to look for in an application for an injunction before deciding to grant the same. The principles that came out in the cases of **SHELL AND BP (ZAMBIA) LTD v CONIDARIS & OTHERS¹**, **MOBIL (Z) LIMITED v MSISKA²** and **HARTON NDOVE v ZAMBIA EDUCATION COMPANY OF ZAMBIA LTD³** can be briefly summarised from the Supreme Court's holding in the celebrated **SHELL & BP** case where it was held that:

“A court will not generally grant an interlocutory injunction unless the right to relief is clear and unless the injunction is necessary to protect the plaintiff from irreparable injury; mere inconvenience is not enough. Irreparable injury means injury which is substantial and can never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired.”

In the instant case, Mr. Mumba Kapumpa submitted that the plaintiff has not met the standard set in the cases and references from the learned authors, to warrant issuance of an order of interim injunction and he urged the court to dismiss the application with costs.

Counsel for the plaintiff also relied on the **SHELL & BP** and **HARTON NDOVE** cases to support his client's application for an order of interim injunction. In the **HARTON NDOVE** case the Supreme Court restated its earlier principles that:

“.....before granting an interlocutory injunction, it must be shown that there is a serious dispute between the parties and the plaintiff must show on the material before court that he has any real prospect of succeeding at trial.”

Counsel for the plaintiff's contention is that whilst he agreed with the authorities cited by senior Counsel for the defendants, it is their submission that the facts of this case and authorities therewith are in favour of the court granting an interim injunction to the plaintiff.

I have carefully considered the plaintiff's application for an order of interim injunction, the affidavit evidence, skeleton arguments and list of authorities submitted by the parties. In the

case of **TURNKEY PROPERTIES LTD v LUSAKA WEST DEVELOPMENT CO. LTD**⁴ in addition to reaffirming the general principles for the granting of an injunction, the Supreme Court held that an interlocutory injunction is appropriate for the preservation or restoration of a particular situation pending trial and that such injunction should not be regarded as a device by which an applicant can attain or create new conditions favourable only to himself. In the same case, the Court also dealt with the issue of the balance of convenience which should be considered by the court by weighing where it lies or in whose favour the scale tilts so as to determine whether more harm will be done by granting or refusing to grant the injunction. This issue of the balance of convenience was also considered in the case of **GRANADA GROUP LTD v FORD MOTOR CO. LTD**⁵, where it was held that it would be wiser to delay a new activity rather than risk damaging one that is established.

Whilst I accept that from the affidavit evidence, there appears to be a serious dispute between the parties, I am not satisfied on the plaintiff's right to relief or prospects of success at the trial since this court is not tasked to decide the matter based on the affidavit evidence. However, I am satisfied that this is a proper case where the status quo needs to be preserved or maintained until the rights of the parties have been properly or finally determined by the court, by not granting the injunction sought. Therefore in following the decision in the case of **GRANADA GROUP v FORD MOTOR CO. LTD**, I am of the

considered view that it would be better to maintain the status quo by delaying a new activity rather than risk damaging one that is established. I, accordingly decline to grant the injunction sought by the plaintiff and dismiss the application with costs.

DATED this.....day of October, 2012 at Lusaka.

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F. M. Lengalenga
JUDGE