

IN THE HIGH COURT FOR ZAMBIA
2011/HP/294
HOLDEN AT LUSAKA
(Civil Jurisdiction)

BETWEEN:

SAMIEL MWANZA

Plaintiff

and

CHILANGA CEMENT PLC
Defendant

Before the Hon. Lady Justice F. M. Lengalenga this 12th day of October, 2012 in chambers at Lusaka

For the plaintiff : Mr. C. K. Sikazwe - Messrs Chanza
Sikazwe Advocates

For the defendant : Mrs. S. N. Kateka - Messrs Nchito &
Nchito

R U L I N G

Cases cited:

- 1. ZAMBIA RAILWAYS LIMITED v SIMUMBA (1995/97) ZR 41**
- 2. SHELL & BP (ZAMBIA) LTD v CONIDARIS & OTHERS (1975) ZR 174, at page 176**
- 3. ZALIWE NYONI v CHILANGA CEMENT PLC - SCZ APPEAL No 128 of 2003**

This is the defendant's application for an order to discharge an ex-parte order of interlocutory injunction, brought pursuant to Order 3 Rule 2 of the High Court Rules Cap 27 of the Laws of Zambia. The application is supported by an affidavit in support of summons filed into court on 24th July, 2012 and sworn by Harriet Kapampa Kapekele, Legal Counsel/Company Secretary in the defendant company. She deposed that the plaintiff obtained an ex-parte order of interim injunction restraining the defendant from evicting him from the company house and the application for an interim injunction has never been heard inter-parties. She deposed further that the defendant is prejudiced by the injunction as it needs the said house to accommodate its current employees. The deponent further stated that the plaintiff has used the injunction as the final judgment on the matter and has neglected to prosecute his claim.

In addition to the affidavit in support of the application, Mrs. S. N. Kateka, Counsel for the defendant submitted that the plaintiff occupied the house as an incident of his employment and that his employment having come to an end, he has no lawful reason to remain in the house. She contended that the plaintiff is not entitled to an injunction to restrain the defendant from repossessing the house and she relied on the case of **ZAMBIA RAILWAYS LTD v SIMUMBA**¹, where the Supreme Court held that where reinstatement is unlikely, removal from the house would not result in irreparable injury incapable of remedy by

payment of damages. Mrs. Kateka argued that in the present case where the plaintiff also occupied the house as an incident of his employment and the same having come to an end and the plaintiff having not challenged the termination, he has no lawful reason to remain in the house. She submitted that therefore the ex-parte order of interim injunction should be discharged.

Counsel for the defendant further submitted that the plaintiff had failed to satisfy the conditions for granting an injunction as laid down in the case of **SHELL & BP (ZAMBIA) LTD v CONIDARIS & OTHERS**² where the Supreme Court at page 176 stated that:

“A court will not generally grant an 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 can possibly be repaired.”

In the instant case, Mrs. Kateka submitted that if at all there are any injuries that the plaintiff would suffer, damages would suffice. She submitted that the balance of convenience weighs in favour of the defendant and she submitted further that since the plaintiff

obtained the injunction he has not made any effort to prosecute his claim. She, therefore, prayed that the ex-parte order of interim injunction granted by this court on 1st April, 2011 be discharged.

The plaintiff, Samiel Mwanza on 5th October, 2012 filed into court an affidavit in opposition to the application to discharge an order of interim injunction, in which he deposed that this court granted him an ex-parte interim injunction. He deposed further that the obligation to obtain an inter-parties hearing date does not only lie with the plaintiff but also with the defendant.

Counsel for the plaintiff, Mr. Chanza Sikazwe made oral submissions to fortify the affidavit in opposition. He submitted that the plaintiff opposed the application and that with respect to the **SIMUMBA** case referred to by Counsel for the defendant, that case is distinguishable from the present case in that that case dealt with issues of reinstatement whereas in the present one, the plaintiff is claiming an interest in the house based on the defendant's offer of sale of the house. His contention is that where there is a claim for purchase of property which was possessed as an incident of employment, damages cannot be adequate compensation. He submitted that the Supreme Court's decision in the case of **ZALIWE NYONI v CHILANGA CEMENT PLC³** is very instructive on this point when they acknowledged that the appellant's acceptance of the offer for her to purchase

the house clearly established her interest in the land. They further stated that damages or compensation cannot adequately atone for loss of land.

Counsel for the plaintiff submitted that in view of the similar circumstances of the present case to the case referred to, it is their prayer that the court not discharge the injunction but confirm it pending the determination of the main action as the plaintiff had shown that this is a matter in which an interlocutory injunction should be granted.

In reply, Mrs. Kateka submitted that the **ZALIWE NYONI** case is very distinguishable from the present case in that the plaintiff in that case had an offer to purchase the house thereby establishing her interest in the property whereas in the present case, the plaintiff has clearly admitted in paragraphs 6 and 8 (a) of the Statement of Claim that he has not received an offer from the defendant. Counsel for the plaintiff reiterated that the plaintiff has failed to demonstrate to the court that there is any lawful reason for the court to maintain the injunction. She concluded by submitting that unlike in the **ZALIWE NYONI** case, this is a proper case for the court to discharge the ex-parte order of injunction.

I have carefully considered the defendant's application for an order to discharge the ex-parte order of interim injunction

granted by this court on 1st April, 2011, firstly on the ground that since obtaining the said order, the plaintiff has taken no further steps to prosecute his claim and secondly on the ground that the plaintiff has not satisfied the requirements for the granting of an injunction as he has failed to demonstrate that he is likely to suffer irreparable injury in terms of the principles laid down in the case of **SHELL & BP (ZAMBIA) LTD v CONIDARIS & OTHERS.**

Although Counsel for the plaintiff relied on the **ZALIWE NYONI** case and likened it to the present case as a reason for trying to persuade this court to maintain the injunction to demonstrate that his client is likely to suffer irreparable damage, Counsel for the defendant pointed out that the plaintiff unlike in the **ZALIWE NYONI** case has no offer for the house by his own admission in paragraphs 6 and 8 (a) of his Statement of Claim. To demonstrate his interest in the house, the plaintiff would have to show that he received an offer and accepted thereby establishing his interest in the land.

In the circumstances, therefore, in following the principle laid down in the **SIMUMBA** case, where the plaintiff occupies a house as an incident of his employment and that employment comes to an end or is terminated, and there seems to be an unlikelihood of reinstatement of the plaintiff such as in the instant case, deprivation or repossession of the house by the former employer

cannot result in irreparable injury incapable of remedy by payment of damages.

A further perusal of the case record clearly shows that the plaintiff has relaxed since he was granted the ex-parte order of interim injunction on 1st April, 2011 and not made an effort to prosecute his claim. To crown it all, he has even gone to the extent of claiming that it is also the defendant's responsibility to seek an inter-parties hearing as if it is the defendant who obtained the ex-parte order. Even in the main case there have been no steps taken towards prosecution of the action. In my considered view, the plaintiff is even fortunate that the defendant did not apply to have the whole action dismissed for want of prosecution.

For the foregoing reasons and the fact that the plaintiff has not established his interest in the house for which he seeks an offer in the main claim, I am not satisfied that this is a proper case in which to confirm or maintain the ex-parte order of interim injunction granted to the plaintiff on 1st April, 2011 by this court. I, therefore, allow the application by the defendant for an order to discharge the said injunction and I, accordingly, discharge the ex-parte order of interim injunction granted on 1st April, 2011 with costs. In default of agreement the same to be taxed.

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

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F. M. Lengalenga
JUDGE