

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA

2014/HP/1479

(Civil Jurisdiction)



ROYD MULELA

1ST PLAINTIFF

LUSI MULELA

2ND PLAINTIFF

LAWRENCE MUKWANKA

3RD PLAINTIFF

RAHPAEL MULELA

4TH PLAINTIFF

AND

JUZAN CONSTRUCTION COMPANY LIMITED

1ST DEFENDANT

BOLDWIN KANSHINKA

2ND DEFENDANT

ROAD DEVELOPMENT AGENCY

3RD DEFENDANT

Before the Honourable Mr. Justice C.F.R. Mchenga SC

For the 1st, 2nd and 3rd Plaintiffs: S.K. Simwanza, Lungu Simwanza and Company

For the 1st Defendant: M. Mulele, GM Legal Practitioners

R U L I N G

The plaintiffs, have pursuant to Order 29 Rule 1 of the Rules of the Supreme Court, applied for an injunction to restrain the 1st defendant or their servants or agents from entering or obtaining gravel from

their land. The application is supported by an affidavit sworn by Royd Mulela who deposed that the 1st defendant has been collecting gravel for the construction of the Landless Corner-Mumbwa Road from his village. He also deposed that his fruit trees were cut down and they are unable to carry out any farming activity because the land has been damaged.

Further, Royd Muleya deposed that though the 1st Defendant has indicated that he obtained authority from Chief Liteta, such authority was obtained in breach of customary law practice as they were not consulted. He deposed that the **Public Roads Act, Act No. 13 of 2002**, requires that they be compensated for any road building materials obtained from their land.

Kun Wang, the Chief Executive Officer of the 1st defendant swore the affidavit in opposition to the application and deposed that when they approached the plaintiffs for gravel for a road construction project, they demanded K500,000. They found the demand to be exorbitant and approached Headman Chipanshya and the Chief Liteta who granted them authority to collect it. He also deposed that the land in issue is not used for any farming activity and is surrounded by thick forest.

In the affidavit in reply, Royd Mulela admitted demanding K500,000. He also deposed that the land in issue is not communal land and is part of a field that was left fallow to regenerate; it is only 50 metres from their homestead. Finally, he deposed that there was nothing wrong with them seeking compensation for the inconvenience they have suffered.

On behalf of plaintiffs, Mr. Simwanza submitted that even if the land in issue is customary land, they have rights and should have been heard. Further, **Article 16 of the Constitution** provides that no one will be deprived of his property without compensation. In addition, counsel submitted that the **Public Roads Act** requires that they be compensated. Finally, counsel submitted that the principles set out in the case of **Shell & BP (Z) Ltd v Conidaris & Others [1975] ZR 174** on matters that will be taken into consideration before an injunction is granted have been met. He submitted that they would suffer irreparable if it is not granted.


On behalf of the 1st defendant, Mr. Mulele submitted that the principles set out **Shell & BP (Z) Ltd v Conidaris & Others (supra)**, have not been met. The plaintiffs have not established a clear right to relief as the land in issue does not belong to them; it is customary land. He also submitted that any injury that they may suffer

can be atoned by Damages as can be deduced from their claim for K500,000 as compensation.

I am indebted to both counsels for their submissions and I have taken them into account in arriving at my decision. When deciding on whether to grant an injunction, one of the considerations is whether any injury that the applicant may suffer can be atoned by the award of damages. On the evidence before me, it is apparent that the objection to the 1st defendant collecting gravel is because they refused to pay the K500,000 that was demanded as compensation. The plaintiffs are still seeking compensation which they claim they are entitled to by virtue of the **Public Roads Act**. This being the case, I am satisfied that any injury they may have suffered or are likely suffer can be atoned by damages.

Consequently, I don't think this is an appropriate case for me to exercise my discretion to grant the plaintiffs the injunction they have prayed for. The application is dismissed with costs.

Delivered in chambers at Lusaka this 26th day of November, 2014.



C.F.R. MCHENGA, SC.
JUDGE