

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA
(Civil Jurisdiction)**

2013/HP/0677



BETWEEN:

**ELIAS TEMBO
AND
LUSAKA CITY COUNCIL**

**APPLICANT

RESPONDENT**

BEFORE MRS. JUSTICE M.S. MULENGA THIS 4TH DAY OF JULY, 2014

**FOR THE PLAINTIFF : MR. F.M. SIKAZWE - MESSRS MILNER
KATOLO & ASSOCIATES**

**FOR THE RESPONDENT : MR. M. MOONO - ACTING DIRECTOR LEGAL
SERVICES LUSAKA CITY COUNCIL**

R U L I N G

Case cited:

1. Mapiko and Another v Channde (2010) ZR vol. 1 402

This is a Ruling on the application by the Applicant for Leave to commence contempt proceedings pursuant to Order 52 Rule 2 as read together with Rule 1 of the Rules of Supreme Court of England 1999 edition.

The application is supported by an affidavit dated 7th November 2013 sworn by the Applicant and a Statement of Facts. The Applicant states the name of the Contemnor as Simon Mwewa who was at the time the acting Town Clerk of the Defendant. He further states that he obtained an interim injunction on 22nd May 2013. That whilst waiting for the final determination of this matter the Respondent has been insinuating and instigating to the Commissioner of Lands that the property in issue being Stand No.

24934 is an open space despite knowing that this matter is subject of adjudication in this Court.

That as a result thereof, the Commissioner of Lands on 1st October 2013 cancelled the Applicant's offer letter subject of these proceedings as per the letter exhibited as "ET2".

The Applicant further states that the action by the Respondent is contemptuous as it is aimed at usurping the powers of this Court. Further that the alleged Contemnor has engaged in acts of blatant disregard and disobedience of the injunction.

That on 15th August 2013, the alleged Contemnor instructed his officers from his City Planning Department to accompany honorable Given Lubinda to the subject plot and to purport that it was an open space and that the structures thereupon were illegal and due to be demolished in blatant disregard of the order of interim injunction duly served on the alleged Contemnor.

That the alleged Contemnor, during the subsistence of the order of injunction, has made several presentations to the Commissioner of Lands that was to portray that the subject plot was an open space that was not meant to be occupied. That it was as a result thereof as mentioned above that the Commissioner cancelled the offer which was properly transferred from the bonafide offerree, one Morris Nshikokola, which is the issue of these proceedings and wherefrom the Applicant derives his *locus standi*.

That on diverse dates the alleged Contemnor had instructed his officers in the City Planning Department to ferry politicians and

cadres to the subject land to purport that the same was an open space and available for allocation despite the order of injunction of this Court.

It is in these premises that the Applicant seeks the indulgence of this Court to grant him leave to issue contempt proceedings against Simon Mwewa and commit him to prison.

Order 52, rule 2 of the White Book, Rules of the Supreme Court, 1999 edition provides that no application for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.

That the application for such leave must be made ex parte and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

The notion of contempt of Court as stated by Matibini J, in **Mapiko and Another v Channde (2010) ZR vol 1 402** is that the courts have the power to coerce those who obstruct the administration of justice as contempt of court consists of interfering with the administration of justice. That contempt can take many forms such as the disobedience by the contemnor of an order requiring him or her to take or refrain from taking specified action. Paragraph 52/1/2 of the White book 1999 edition (RSC) states that the chief instance of

civil contempt or "contempt in procedure" is disobedience to an order of the Court by a party to the proceedings.

The Applicant herein deposes that Mr. Simon Mwewa, the Director of City Planning in the employ of the Respondent has blatantly disobeyed the injunction by making representations to the Commissioner of Lands who in turn cancelled the letter of offer upon which the Applicant derives his *locus standi* and further by taking cadres to the said property declaring it an open space. I must state that the Applicant's affidavit does not meet the requirements of Order 5 Rules 17 and 18 High Court Rules Cap. 27 in a number of respects.

The interim injunction issued by this Court is couched as follows:

"It is hereby Ordered that the Defendant either by themselves, agents, servants or whosoever be and are hereby restrained from enforcing the Enforcement Notice dated 16th May 2013."

This order is specific and restricted to the enforcing of an enforcement notice. The enforcement notice has to do with demolition or removal of illegal structures. The actions complained about by the applicants do not touch on the enforcing of an enforcement notice but relate to making some representations to the Commissioner of Lands. This application cannot therefore be based or hinged on the interim injunction order herein.

Contempt proceedings are very serious in nature and should not be lightly employed. Paragraph 52/1/13 states in part that **"an applicant who seeks to commit a person for breach of an injunction must establish a deliberate or willful breach of a court order."**

Therefore, for leave to be granted one must satisfy the Court that there is a *prima facie* case against the alleged Contemnor and in this case that there was a breach of the injunction herein. This has not been met by the Applicant in this application.

I accordingly deny leave to commence committal proceedings. Costs will remain in cause.

Leave to appeal is granted.



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M.S. Mulenga
High Court Judge