

**IN THE HIGH COURT FOR ZAMBIA  
AT THE COMMERCIAL REGISTRY  
HOLDEN AT LUSAKA**

**2014/HPC/0363**

(Commercial Jurisdiction)

**BETWEEN:**

MICHEAL PASQUIN

**PLAINTIFF**

**and**

COSTAS REFRIGERATION LIMITED

**DEFENDANT**

**BEFORE THE HON. MR JUSTICE JUSTIN CHASHI IN  
CHAMBERS ON THE 8<sup>TH</sup> DAY OF MAY 2015**

*For the Plaintiff: J. Mutime (Ms) Messrs Theotis Mataka and Sampa Legal Practitioners*

*For the Defendant: M. Katolo, Messrs Milner Katolo and Associates*

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**RULING**

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**Cases referred to:**

1. Shell and BP Zambia Limited and Conidaris and Others (1974) ZR 291
2. Turnkey Properties v Lusaka West Development Company and Others (1984) ZR 85.

**Legislation referred to:**

3. The High Court Act, Chapter 27 of The Laws of Zambia.

On the 4<sup>th</sup> day of September 2014, the Plaintiff Michael Pasquini commenced proceedings against the Defendant Costas Refrigeration

Limited by way of Writ of Summons seeking the following reliefs:

- 1. Specific performance of the Contract of Sale of Stand No. 9546 dated the 23<sup>rd</sup> day of February 2004,**
- 2. A declaration that the Plaintiff is the lawful owner of Stand No. 9546,**
- 3. Mesne profit from August 2004 to August 2014**
- 4. Interest,**
- 5. Any other relief the Court may deem fit and**
- 6. Costs of and incidental to this action.**

The Writ of Summons is accompanied by a Statement of Claim of even date.

It would seem from a perusal of the Statement of Claim that the property therein subject of the Plaintiff's claim is the Remaining extent of **Stand No. 9546 Lusaka** and not **Stand No.9546**. To that extent the Writ of Summons and the Statement of Claim are at variance and that issue will need to be addressed in due course.

What followed thereafter is that the Defendant on the 12<sup>th</sup> day of September 2014 filed a Memorandum of appearance and subsequently filed a Defence and Counter Claim on the 19<sup>th</sup> day of September 2014. I should point out at the earliest that an

Injunction is not amongst the reliefs being sought under the Counter Claim.

At the time of filing the Defence and Counter Claim, the Defendant also filed an application for an Interim Injunction to restrain the Plaintiff from trespassing on the Remaining extent of Subdivision of **Stand No. 9546 Lusaka**.

The affidavit in support thereof deposed to by Constantinos Ioannidas, a Director of the Defendant's Company, makes very interesting reading. The deponent seems to be the aggrieved party and the one seeking the Interim relief when the Defendant is a separate legal entity which has sued in its own legal capacity.

Furthermore, the content falls far short of what is expected in applications of this nature. I will revert to this point in due course.

Despite the shortcomings on both sides in this matter, I have in determining the application taken into consideration the Summons, the affidavit evidence by both parties and their respective Skeleton arguments.

One fact clearly comes out in the evidence and that is, the Defendant as a Company is no longer in possession or occupancy of the property in issue, having been evicted, a fact which has been acknowledged by the Defendant.

The starting point for the granting of an Injunction is that the application does not come to Court in isolation. It must be pleaded by a party in either the Statement of Claim or Counter

Claim. Failure to do so means that the application has no leg to stand on.

As earlier alluded to, the Defendant has not pleaded for the relief in its Counter Claim and therefore the application has no leg to stand on. On that basis only, this is not a proper case for granting of an Interim Injunction.

However, I need to go further and state that an Injunction is a discretionary necessity. A party is not entitled to it as a right. It is only granted to preserve the **status quo** until the rights of the parties have been determined in the action.

In exercising that discretion, generally the Court has to take into consideration two main issues.

Firstly, a party seeking an Injunction must establish clearly that he is entitled to the right which he seeks to protect. The modern tendency as elaborated in the case of **Shell & BP Zambia Limited and Conidaris and Others**<sup>1</sup> is to grant an Interlocutory Injunction only where the right to relief being sought is clear.

The second issue is that an applicant must show that an Injunction is necessary to protect him against irreparable injury. The case of **Turnkey Properties v Lusaka West Development Company Limited**<sup>2</sup> refers.

Both issues are subject to affidavit evidence. As earlier stated, very little of relevance has been said in the affidavit in support of the application.

The applicant has neither demonstrated the right that the Defendant is seeking to protect nor the irreparable injury the Defendant is likely to suffer if the application is not granted.

Lastly, the object of an Injunction is to maintain the status quo.

It is not in dispute as earlier stated that the Defendant is no longer in possession or occupancy of the property. Therefore an Order for an Interim Injunction to restrain the Plaintiff from trespassing will be totally in a vacuum and will not serve any useful purpose. In short there is no status quo to preserve.

In the view that I have taken, this is not a proper case for granting of an Interim Injunction. The application is therefore dismissed with costs to the Plaintiff. Same to be taxed in default of agreement.

Leave to appeal is hereby granted.

**Delivered at Lusaka this 8<sup>th</sup> day of May 2015.**

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Justin Chashi  
**HIGH COURT JUDGE**