

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

2014/HP/0715



BETWEEN:

**MWAMBA SHEMA & 56 OTHERS
AND**

PLAINTIFFS

**MABVUTO PHIRI (sued in his capacity as
Chairman of Garden House Route Committee**

DEFENDANT

**Before Honourable Justice Mrs. J.Z. Mulongoti in Chambers
on the14th.....day ofJan....., 2015**

For the Plaintiffs: Mrs. C.K. Mulenga of CKM Associates

For the Defendant: Mr. L. Saboi of Nyangulu & Company

R U L I N G

Cases cited:

1. *Zambia State Insurance Corporation Limited v Dennis Mulikelela (1990-1992) ZR 18*
2. *Gondwe v B.P. Zambia Limited (1997) ZR 178*
3. *Shell and B.P. Zambia Limited v Conidaris and Others (1975) ZR 174*

Legislation referred to:

1. *Order XXVII of the High Court Rules Chapter 27 of the Laws of Zambia*

This ruling relates to the plaintiffs' application for an interlocutory injunction to restrain the defendants from

threatening violence, beating and torturing the plaintiffs or dealing with them in any way. The application was made pursuant to Order XXVII of the High Court Rules Chapter 27 of the Laws of Zambia. The application was made by summons supported by an affidavit dated 13th May, 2014 sworn by the 1st plaintiff, Mwamba Shema. He swore that he is the chairman for the plaintiffs group consisting of public service vehicle drivers operating on the garden house route. That the route has a committee elected by the membership every four months according to their constitution. That the defendants were elected into office on 20th November, 2013 and their term expired four months later after which they refused to step down.

He deposed that when the general membership enquired about fresh elections, the defendants unleashed a reign of terror with threats of violence and death to anyone questioning their continued stay in office. That the defendants hired and tortured protesting drivers using stones and electricity currents applied to their bodies. And that dissenting drivers have been arbitrarily suspended and expelled. He further deposed that drivers participate in a rotational money saving scheme locally known as chilimba which is paid to individual drivers on a daily basis but

that no driver had received such money for a period of thirty days.

The defendant filed an affidavit in opposition dated 22nd May, 2014. He swore that his tenure of office was for a period of one year and not four months as alleged. That according to the constitution, his tenure of office was still running. He denied instilling fear or threatening violence to the plaintiffs. He deposed that the suspended and expelled drivers were removed for misusing money and that the suspensions and expulsions were in accordance with the disciplinary code of conduct. He also denied having beaten up or tortured any driver. He further deposed that the plaintiffs had not shown that there is a dispute between the parties or that they have a real prospect of succeeding at trial or that they may suffer irreparable injury if the injunction is not granted.

At the hearing, the plaintiff was represented by Mrs. C.K. Mulenga. There was no appearance for the defendant. I proceeded to hear learned counsel for the plaintiffs who entirely relied on the affidavit in support of the injunction aforementioned and urged the court to confirm the ex parte order of interim injunction granted 16th May, 2014.

I have considered the evidence adduced by the parties. It is trite law that in considering an application for an interlocutory injunction, I must firstly determine whether or not the plaintiffs have raised a serious question to be determined at trial. If, there be no serious question to be tried, then the injunction should not be granted.

The plaintiffs seek a declaration that the defendants are illegally in office and should pave way for fresh elections as their tenure of office was for a period of four months. On the other hand, the defendants maintained that their tenure of office was for a period of one year. Meanwhile, page 2 of exhibit "MP1" annexed to the defendant's affidavit in opposition discloses that the committee members were to serve for a period of one year only. Going by the provisions of the constitution aforesaid, the defendants' tenure of office expired sometime in November, 2014.

In the circumstances, I am inclined not to grant the plaintiffs' application for an interim injunction because there are no serious questions to be determined at trial. I am fortified by the Supreme Court's decision in the case of **Zambia State Insurance Corporation Limited V Dennis Mulikelela (1)** that *"a court will not grant an interlocutory injunction unless the Court is satisfied*

on the facts before it that the plaintiff is likely to succeed in the relief sought” Similar sentiments were echoed in the case of **Gondwe v B.P. Zambia Limited (2)**.

I am further fortified by the case of **Shell and B.P. Zambia Limited v Conidaris and Others (3)** wherein the Supreme Court 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.*”

In light of the foregoing, I am of the considered view that there are no serious questions to be determined at trial. The plaintiffs have not shown a clear right to the relief sought which would require the protection of an interlocutory injunction. In sum, the plaintiffs have failed to demonstrate that there is a probability that they may be entitled to the relief they are seeking in the main action. Therefore, the plaintiffs’ application for an interlocutory injunction is unsuccessful. Accordingly, the ex parte order of interim injunction granted on 16th May, 2014 is discharged. Costs in the cause.

Leave to appeal is granted.

Delivered at Lusaka this 14th day of Jan 2015

J.Z. Mulongoti

**J.Z. MULONGOTI
HIGH COURT JUDGE**