

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

**2014/HP/1638**

**BETWEEN:**

**FRANK MALUNGA MUSONDA**

**PLAINTIFFS**

AND

**MERCY SIMWALE NHANDU  
ERIC NHANDU**

**DEFENDANT**



**Before the Hon. Mrs. Justice J.Z. Mulongoti  
in Chambers on the 26<sup>th</sup> day of June, 2015.**

*For the Plaintiff:* *Mr. M. Nkurukusa, Charles Siamutwa  
Legal Practitioners*

*For the 1<sup>st</sup> Defendant:* *N/A*

*For the 2<sup>nd</sup> Defendant:* *In Person*

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**R U L I N G**

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**Cases referred to:**

1. American Cyanamid Company v. Ethicon Ltd (1975) A.C 396
2. Shell and BP v. Connidaris and Others (1975) ZR 174

The ruling is for an application for Injunction on behalf of the plaintiff. The application was by summons and affidavit in support sworn by the plaintiff. The salient features were that on 29<sup>th</sup> May 2013, he entered into a contract of sale with the 1<sup>st</sup> defendant who

is the mother to the 2<sup>nd</sup> defendant, for the purchase of subdivision of stand No. 1367 measuring approximately 600 square metres. That at the time of the transaction, the 2<sup>nd</sup> defendant purported to be the owner and that registration in the 1<sup>st</sup> defendant's name was to avoid arousing suspicions as he is a civil servant. That the plaintiff has paid for the purchase price of K60,000.00 in full. That the defendants have failed to transfer title to the plaintiff despite several meetings and requests by the plaintiff that they do so.

The 2<sup>nd</sup> defendant filed an affidavit in opposition. He deposed that he did make representations to the plaintiff that the plot in question legally vests in his possession but denied the allegation that the registration of the plot in the 1<sup>st</sup> defendant's name was to avoid arousing suspicion in the civil service. He denied the allegations of failing to transfer title into the plaintiff's name. And that he was already processing the transfer of 600m<sup>2</sup> for the plaintiff's favor and has submitted to the Lusaka planning authority the proposed subdivision site plans for the plot purchased by the plaintiff per exhibit "EN1", the approved subdivision site plan. And that the Ministry of Lands have since numbered the subdivision per exhibit "EN2". That in August 2014 these documents were served on the plaintiff's advocates as acknowledged in the letter marked "EN3". The 2<sup>nd</sup> defendant deposed that he was thus surprised to be sued by the plaintiff in October 2014 because he is only remaining with approximately 30% to complete the transfer obligation as a seller.

And that at no point has he been unwilling or not co-operative towards the transfer of the plot the plaintiff purchased.

Further, that the plaintiff is insecure and inquisitive because of the wrong traditional impression he has of the 2<sup>nd</sup> defendant which are not factual or legal. As such the application for injunction be dismissed for lack of credible merit.

At the hearing of the application the learned counsel for the plaintiff relied on the application in support. He amplified that the plaintiff paid for the plot in full by June 2013 but to date the only steps taken by the defendants was to obtain the numbering of the property.

According to counsel the failure by the defendants to co-operate has put the plaintiff in fear and there is nothing to stop them from disposing the land. Thus, the plaintiff seeks an injunction to have protection till transfer is done.

Counsel relied on the famous case of **American Cyanamid Company v. Ethicon Ltd (1)** and the Zambian case of **Shell and BP v. Connidaris (2)** and argued that the plaintiff will suffer irreparable injury should the defendants decide to offer to someone else.

The 2<sup>nd</sup> defendant equally relied on his affidavit in opposition. He also submitted that the cause of the delay in completing the transaction is the government. And that the plaintiff has

prematurely come to court and is just speculating that the defendants are not committed to the process. That only the survey diagram is remaining and the defendants are willing and co-operative. That the plaintiff even reported the matter to the police but failed. He further submitted that the process of transferring and registering the plaintiff's title had begun and there is no need for an injunction.

It is trite law as enunciated in the American Cyanamid Co. case that in order for a court to grant an injunction there must be a serious question to be tried. A cursory look at the plaintiff's pleadings does not disclose a serious question to be tried. Apart from an injunction the plaintiff's claim is for damages for breach of contract, refund of expenses arising from the delay and inability to complete the transaction or alternatively a refund of the purchase price with interest.

The defendants have contended that the delays are by government departments and that they are willing and co-operative to ensure the property is transferred to the plaintiff. And that the process has begun.

I note that the plaintiff has failed to demonstrate how the defendant's have breached the contract. He is just speculating and fears that the defendants might offer the property to another person. There is no basis for such allegation or speculation. As such I find there is no serious question to tried.

Further, in the *American Cyanamid* case it was established also that an injunction should not be granted where damages were an adequate remedy should the plaintiff's action succeed. And that the plaintiff should suffer irreparable damage which cannot be atoned for by damages. The plaintiff has claimed for damages and would clearly not suffer irreparable damage. The refund he claims can be ascertained and the purchase price is a known figure of K60,00.00. He would in no way suffer irreparable injury which cannot be atoned for by damages.

For the foregoing, I refuse to grant the plaintiff the injunction sought. The ex parte order of injunction granted on the 5<sup>th</sup> day of November 2014 is accordingly discharged. Costs of, and incidental to this application, to the defendants to be taxed failing agreement.

Leave to appeal is granted.

Delivered at Lusaka this 26<sup>th</sup> day of June, 2015.

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