

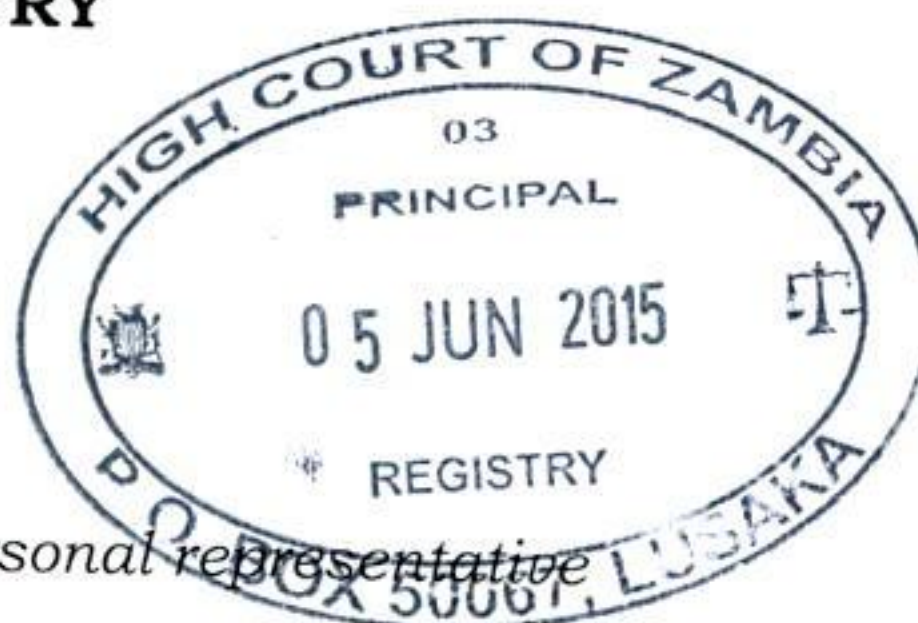
IN THE HIGH COURT FOR ZAMBIA

2015/HP/523

AT THE PRINCIPAL REGISTRY

AT LUSAKA

(CIVIL JURISDICTION)

BETWEEN:

HILDAH NGULUBE (*Suing as Personal representative
of the estate of the late Gilliard Ngulube*)

PLAINTIFF

AND

THE ATTORNEY-GENERAL

1ST DEFENDANT

J&D MANGANESE EXPLORERS LIMITED

2ND DEFENDANT

**Before The Honourable Mrs. Justice P.C.M. Ngulube in
Chambers.**

For the Plaintiff:

Mrs. M. Chakoleka, Messrs Nchito and
Nchito Legal Practitioners

For the 1st Defendant:

No Appearance

For the 2nd Defendant:

No Appearance

RULING

CASES REFERRED TO:

1. Shell and BP. Vs. Conidaris (1975) ZR 175
2. American Cyanamid vs. Ethicon (1975) AC 395
3. Preston vs. Luck 27 Ch D.492
4. Mobil (Z) Limited vs. Msiska (1983) ZR 86

This is a Ruling on whether to make an Ex-parte Order of Injunction that was granted on the 29th of April, 2015 interlocutory. The application for an Injunction was made

pursuant to Order 27 Rule 1 of the High Court Rules, Chapter 27 of the Laws of Zambia. The application comprises of Summons and an affidavit that was sworn by one Hildah Ngulube. She deposed that she is the widow and the personal representative of the estate of the late Gilliard Ngulube, who was the registered lessee of Property Number F/47a/1/E/8, and that on the 18th of September, 1998, a Certificate of Title number 6412 was duly registered in the name of the deceased, in respect of the aforesaid property. The Plaintiff further avers that the deceased, her late husband, died in July, 2014, and she was then appointed personal representative of his estate.

The Plaintiff avers that on the 19th of September, 2014, she conducted a search at the Lands and Deeds Registry and discovered that the property had been re-entered, and a certificate of re-entry was registered on 24th February, 2014. The Plaintiff came to learn that the property had been leased to J & D Manganese Explorers Limited, the 2nd Defendant. The Plaintiff states that neither she nor the deceased were served with any notice of intention to re-enter by the Office of the Commissioner of Lands. The Plaintiff further states that she was not given an opportunity to make representations under the law prior to the

purported re-entry on the property. Upon inquiry from the Ministry of Lands, she was told that the re-entry was done because the land had not been developed.

However, the Plaintiff states that the property had existing developments, including a slab which measured 22.3mx x 10m, an electricity transformer, a power line, building sand, quarry dust, river sand, concrete blocks and flat stones, respectively.

The Plaintiff states that there was no breach of the conditions of the lease and as such, there was no lawful justification for the purported re-entry and subsequent re allocation of the property.

The Plaintiff states that she believes that the period between the re-entry and the offer of the property and title to the 2nd Defendant is questionable and taints the process of the re-entry.

The Plaintiff states that the property in question was the only piece of land that the deceased left for his family. The Plaintiff therefore prays that the 2nd Defendant be restrained from dealing with the property in any manner that would be adverse to the Plaintiff's interests until the final determination of the matter.

At the hearing of the matter, on the 22nd of May, 2015, the Plaintiff's Counsel, Mrs. Chakoleka submitted that she would rely

on the affidavit in support that was sworn by one Hildah Ngulube. Mrs. Chakolika further submitted that the case of **Shell and BP vs. Conidaris¹ (1975) ZR 175** is instructive on the subject. In that case, it was stated that-

“a court will not grant an interim injunction unless the right to relief is clear and unless the injunction is necessary to protect the Plaintiff from irreparable injury.”

Mrs. Chakoleka submitted that the Plaintiff has sworn an affidavit to the effect that there was no lawful justification for the re-allocation of the piece of land as there was no notice of re-entry according to Section 13 of the Lands Act, Chapter 184 of the Laws of Zambia.

Mrs. Chakoleka submitted that the Plaintiff seeks a declaration that the re-entry was not procedural and was therefore null and void. The Learned Counsel for the Plaintiff also submitted that the Plaintiff has shown that she and the deceased's family will suffer irreparable injury as they will lose the only property that was left to them by the deceased. They have already lost the materials that were on the property at the material time and that there is therefore a risk of irreparable injury to the Plaintiff. Mrs.

Chakoleka submitted that the balance of convenience lies in favour of granting the injunction than in not doing so. The Plaintiff and her children have been deprived of the only property of the estate as well as the materials that the deceased spent money on by the 2nd Defendant, who has gained from procedural impropriety. This is to the detriment of the Plaintiff. Mrs. Chakoleka therefore prayed that the court confirms the Ex-parte order for injunction until final determination of the matter, with costs to the Plaintiff.

I have considered the Plaintiff's affidavit and the arguments in this matter. The Law relating to injunctions is expressed in various decisions, such as the cases of ***American Cyanamid vs. Ethicon (1975) AC 395***, ***Shell and BP vs. Conidaris and Others (1975) ZR 174***, ***Mwenya and Randee vs. Kapinga (1998) ZR 17*** and ***Preston vs. Luck (1884) 27 Ch D 492***.

In the ***Shell and BP vs. Conidaris and Others*** case, the court stated that-

“a court will generally not grant an injunction unless the right to relief is clear and the injunction is necessary to protect the Plaintiff from irreparable injury, mere

inconvenience is not enough. Irreparable injury means injury which is substantial and can never be adequately remedied or atoned for by damages, and injury which cannot possibly be repaired.”

In the case of **American Cyanamid vs. Ethicon Limited**, Lord **Diplock**³ stated that-

“ The court should go on to consider whether.....if the Plaintiff were to succeed at trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant’s continuing to do what was sought, to be enjoined between the time of the application and the time of the trial. If damages would be an adequate remedy and the defendant would be in a financial position to pay them, no injunction should normally be granted however strong the claimant’s case appeared to be at that stage.”

In the case of **Mobil (Z) Limited vs. Msiska (1983)**⁴ ZR 86, the court stated that an injunction is to be granted if it is necessary to protect the Plaintiff from irreparable injury.

I am alive to the fact that what is as issue is title to land. I therefore find that an injunction would be an appropriate remedy, pending the determination of the main matter as damages may not be an adequate remedy. I find that it is desirable in the circumstances of this case to grant the Plaintiff an injunction as I find that the balance of convenience weighs on the side of the Plaintiff. I hereby confirm the ex-parte injunction and make it interlocutory.

Costs are for the Plaintiff to be taxed in default of agreement.

Leave to appeal is granted.

Delivered this 5th day of June, 2015.



P.C.M. Ngulube

HIGH COURT JUDGE