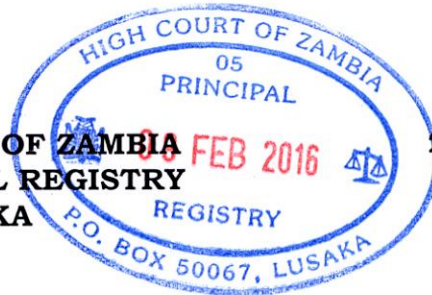


**THE HIGH COURT OF ZAMBIA**  
**AT THE PRINCIPAL REGISTRY**  
**HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*



**2014/HP/2330**

**IN THE MATTER OF: THE CONSTITUTION OF RAMAKRISHNA VEDANTA CENTRE (ZAMBIA)**

AND

**IN THE MATTER OF: SECTIONS 3, 4 AND 16 OF THE SOCIETIES RULES PURSUANT TO SECTION 38 OF THE SOCIETIES ACT, CHAPTER 119 OF THE LAWS OF ZAMBIA**

AND

**IN THE MATTER OF: THE RAMACKRISHNA VANDETA CENTRE ZAMBIA**

**BETWEEN:**

**DIPTIS GHOSHI (SUING IN HIS CAPACITY AS DULY APPOINTED REPRESENTATIVE OF THE RAMAKRISHNA MISSION INDIA)**

**1<sup>ST</sup> APPLICANT**

**ITU GHOSHI (SUING IN HER CAPACITY AS DULY APPOINTED PRESIDENT OF THE INTERIM COMMITTEE OF THE RAMAKRISHNA VEDANTA CENTRE (ZAMBIA))**

**2<sup>ND</sup> APPLICANT**

AND

**GOVINDABHAI PATEL  
BABURAO PATEL  
RAMAKRISHNA VADANTA CENTRE**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDNET  
3<sup>RD</sup> RESPONDENT**

**Before the Honourable Mr. Justice C. Kajimanga in Chambers this 9<sup>th</sup> day of February 2016**

**For The Plaintiff :** *Mrs. M. B. Mutuna of Mweshi Banda and Associates*

**For The Defendant:** *Ms. K Mweemba of Mweemba Chashi and Partners*

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## **Ruling**

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**Cases referred to:**

1. Hilary Bernard Mukosa v Michael Ronaldson (1993-1994) ZR 26
2. Turnkey Properties Limited v Lusaka West Development Company Limited, BSK Chiti (sued as Receiver) and Zambia State Insurance Corporation Limited (1984) ZR 85
3. Shell and BP Zambia Limited v Conidaris and Others (1975) ZR 174

4. Preson v Luck (1884) 27 Ch D 497
5. American Cynamid v Ethicon Limited (1975) 1 ALL ER 504

This is the Applicants' application for an order of interim injunction. The Application is supported by an affidavit sworn by Diptis Ghoshi the 1<sup>st</sup> Applicant herein dated 4<sup>th</sup> December 2015.

The deponent's affidavit discloses that the Applicants herein are devotees of the Ramakrishna Vedanta Centre (Zambia) ("the Centre") the 3<sup>rd</sup> Respondent which was duly registered under the Societies Act on 14<sup>th</sup> January 1974 under registration No ORS/102/67/35. The Centre was registered for the purpose of propagating the fundamental truths of the Ramakrishna Movement as stated by Swami Vivekananda which aims to promote the spiritual and social wellbeing of followers (see exhibit "DG1"). The deponent further alleged that in terms of clauses I and IV of the Constitution of the 3<sup>rd</sup> Respondent, the Respondent was to be run by a Management Committee comprising of a Spiritual Director therein named as the Swami Nisreyasananda of the Ramakrishna Mission, a President, Vice President, Secretary, Assistant or Joint Secretary. Due to the message of peace and humanism propagated by the Ramakrishna Mission, the First Republican President Dr Kenneth David Kaunda, did on 10<sup>th</sup> January 1970 allocate land to the Ramakrishna Mission for the purpose of carrying out its works which land is known as Lus/8100 and registered in the 3<sup>rd</sup> Respondent's name (see exhibit "DG2").

The deponent stated that the 3<sup>rd</sup> Respondent has since its registration carried out the vision and purpose of the Ramakrishna Mission until the recent years. When the Swami Nisreyasanda died in 1991, the 3<sup>rd</sup> Respondent carried on its operations and in 2001 there being no substitute for him sent by the Ramakrishna Mission, the 3<sup>rd</sup> Respondent was affiliated to the Ramakrishna Mission ("the Mission") in accordance with clause IV (a) of the Constitution. The affidavit further discloses that in 2001, the mission sent a Monk from its headquarters to the 3<sup>rd</sup> Respondent as its new Spiritual Director in order to satisfy the requirement of clauses I and IV of

the Constitution. That the 1<sup>st</sup> Respondent who had created a post of Chairman of the Centre and had been running the Centre since the Death of Swami Nisreyasananda was unhappy about the Mission sending the Monk by the name of Swami Brahmeshananda to Zambia as the Centre's Spiritual Director.

The affidavit further discloses that in order to frustrate the Mission and the Monk, the 1<sup>st</sup> Respondent and his close allies arranged for a trip to Zimbabwe under the pretext and whilst there, the deponent was informed by the Mission that the Monk was abandoned by the 1<sup>st</sup> Respondent and the rest of the Party who returned to Zambia without him. (See "DG 3"). The deponent noticed the mismanagement of the Centre by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and sought intervention from the Registrar of Societies in order to ensure that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent run the affairs of the Centre in line with its Constitution to fulfill the intention of the Ramakrishna Movement Worldwide. (See exhibit "DG 4").

The affidavit also discloses that the mismanagement of the Centre by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents was evident by the fact that the Centre has not audited its accounts since 2006; the Centre Hall and rooms meant for supervising or visiting Monks are rented out from time to time in breach of the Societies Act Cap 119 of the Laws of Zambia and; the Temple at the Centre is locked during the course of the week and is only open for 2 hours on Sunday, hence worship services during the week have to take place in the corridor in breach of clause II (e) of the Constitution. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents do not wish to be affiliated to the Mission and have consequently denied visiting Monks from the Mission access to the Monks' quarters at the Centre in breach of clause II(h) of the Constitution (see exhibit "DG 5"). It was alleged that the Centre does not carry out any of the social outreach programmes envisioned in clause II(d) of the Constitution and efforts by the Applicants and other Devotees to hold language classes for children have been frustrated by the 1<sup>st</sup> Respondent refusing to give access to the Centre Hall.

It was further deposed that in fact, all the objectives of the Centre as per clause II of the Constitution have been breached by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as the 1<sup>st</sup> Respondent with the support of the 2<sup>nd</sup> Respondent has resorted to keeping the keys to the Temple and Hall to himself. In an effort to ensure that the Centre is destroyed and its mission can no longer be carried out, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have been carrying out meetings in the absence of the Applicants although they were appointed as members of the executive committee. At these meetings the following resolutions were passed: the change of the Centre to Hindu Veda Centre; to start the construction of a commercial block on the Centre's property under an association known as the Human Service Trust (HST) and to change the Constitution of the Centre in order to align it to the objectives of the Hindu Veda Centre or HST.

The affidavit also discloses that upon conducting searches at the Registrar of Societies, the resolution passed at the clandestine meetings held by the Respondents were discovered by the Applicants and they wrote a letter to the 1<sup>st</sup> Respondents on 11<sup>th</sup> June 2014 in order to highlight the illegality of the meetings and the resolutions passed at such meetings. The affidavit discloses that efforts by the Registrar of Societies to obtain a set of keys to the Centre on behalf of the interim committee proved futile. (See exhibit "DG6"). Following numerous complaints to the Registrar of Societies and the Applicants' failed attempts to resolve the matter with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, a meeting was held at the office of the Registrar of Societies on 11<sup>th</sup> September 2015 which was attended by the parties hereto. Owing to the fact that there has been no General Meeting at which the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were elected to act as office bearers, the Registrar of Societies directed that: the 1<sup>st</sup> and 2<sup>nd</sup> Respondents should avail the Registrar of Societies with the audited accounts of the 3<sup>rd</sup> Respondent within 90 days; and a general meeting at which the office bearers would be elected should be held within 90days. The Registrar of Societies wrote to the Permanent

Secretary of the Ministry of Home Affairs confirming the directive or resolution. (See exhibit "DG7".)

The deponent also stated that that it was further resolved that the interim committee would have representation from the other side and that of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents equally and that a Spiritual Director would be assigned in terms of the Constitution. In complete disregard of the resolution of the meeting that took place on 19<sup>th</sup> September 2015, which resolution had been agreed to, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents refused and/or neglected to attend the first meeting of the interim committee despite a notice of such meeting being served on them through the office of the Registrar of Societies as the Applicants were not permitted to go near their homes. (See exhibit "DG8").

The deponent alleged that on 9<sup>th</sup> October 2015, the first meeting of the interim committee took place in the absence of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents or a representative from the office of the Registrar of Societies, despite notice being duly served on them. That the meeting elected new office bearers and in line with agenda item No 2 the resolution was that: the Mission or authorized representative would be the Spiritual Director of the 3<sup>rd</sup> Respondent; the 2<sup>nd</sup> Respondent was elected President of the 3<sup>rd</sup> Respondent; a member of the defunct management committee would be the vice president; Mr. Surajit Chowdury was appointed secretary; Mr. Swapan Gopal Mitra was appointed treasurer; and a member of the defunct management committee was appointed as special officer. The affidavit further discloses that on 15<sup>th</sup> October 2015, a copy of the minutes of the first meeting of the interim committee was sent to the Registrar. (See "DG9").

The affidavit in support further discloses that the 1<sup>st</sup> Applicant is the overall in charge of the 3<sup>rd</sup> Respondent as the duly authorized representative of the Mission (See "DG10"). The deponent also stated that it had come to his attention that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent intended to have a general meeting on 5<sup>th</sup> December 2015 at 18:30 hours. Neither the applicants nor other members of the interim committee had been given notice of this

meeting nor was the agenda circulated to them. It is clear from the foregoing that that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are intent on ignoring the resolutions passed at the office of the Registrar of Societies on 11<sup>th</sup> September 2015. The deponent feared that if the meeting was allowed to proceed, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents will pass resolutions which are detrimental to the Centre more so that they are the ones in possession and control of the assets of the Centre. That an interim injunction is therefore necessary to preserve the status quo of the Centre and give effect to direction of the Registrar of Societies pending the final determination of this matter in view of two split committees of the Centre that have direction/resolution of the Registrar of Societies.

The affidavit further discloses that if the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are left unrestrained and not prohibited from dealing with the property and assets of the Centre this may result in grave loss to the Centre which will be detrimental to the people of Zambia whom it was established to benefit through the provision of social services such as free education trainings and the provision of medical assistance. This is compounded by the fact that there have been no audited accounts of the Centre since 2006, hence the 1<sup>st</sup> and 2<sup>nd</sup> Respondent have unrestricted access to funds of Centre and they have not been accounted for such funds.

In opposition to the application for an interim injunction the Respondents filed an affidavit sworn by Navnital Balubhai Patel, the 2<sup>nd</sup> Respondent herein dated 17<sup>th</sup> December 2015. He deposed that the Hindu Veda Centre (then the Ramakrishna Vedanta Centre hereinafter referred to as the Centre) was built by elders of the local Hindu community namely Sri Narottambai Paremar, Sri Chhotubhai Parmer, Sri Ishwarbhai Khatri entirely with the funds contributed and supplemented by the donations of the rest of the local Hindu community in the 1970s. The old Constitution of the Centre provided for objects of the Centre and that there were seven members of the managing committee with Swami Nisreyasanda being the Spiritual and permanent Secretary till the Mission Headquarters in India sends a

substitute for him of formerly affiliates of the Centre. The land known as Lus/8100 was allocated to the Centre and not to the Ramakrishna Mission. The founding members with applied for and were given land as a 99 year lease. This was done by the funding of the founding members with no involvement or financial support from the Ramakrishna Mission Belur Math India.

The affidavit in opposition discloses that after the death of Swami Nisreyasanda in 1991, no substitute was sent for him. In 1995 the Centre's request for affiliation was not accepted by the Mission. On 11<sup>th</sup> July 2001 affiliation was granted to the Centre by the Mission. However, this was subsequently withdrawn by letter dated 25<sup>th</sup> July 2002 in which the Secretary General of the Mission stated that the affiliation granted was cancelled and that the name "Ramakrishna Mission" and their emblem no longer be used by the Centre (See exhibit "BP1"). In September 2011 after a meeting with the Registrar of Societies, they sent through to the office, the names of office bearers of the Centre at the time as requested by the Registrar (See exhibit "BP2").

The deponent deposed that in December 2013, the Registrar of Societies, Mr. Kakoma Kanganja wrote to the Centre and advised that that the new list of office bearers be submitted and that there was need to change the Constitution as a lot had changed since the registration of the organization. In response to the said letter they wrote to the Registrar on 12<sup>th</sup> June 2014 informing him that they had embarked on a membership drive and that they intended to elect a new executive committee and draft a suitable Constitution to suit present needs. A copy of the resolution to this effect was enclosed with the said letter (See exhibit "BP3"). The old Constitution had no seal nor did it have the signatures of the office bearers or address of the Centre. On 1<sup>st</sup> June 2015 the executive committee of the Centre held a meeting whose agenda involved, *inter alia*, the adoption and approval of a new Constitution. Following this meeting a notice of change of a Society's Name or Registered Office or Postal Address, or change of Constitution or

Rules or Variation of Object (Form SO7) was filed on 2<sup>nd</sup> June 2015 (See exhibit "BP4").

The affidavit also discloses that thereafter on 9<sup>th</sup> June 2015, the new Constitution of the Hindu Veda Centre was filed with the Registrar of Societies (See exhibit "BP5"). All the necessary and legal steps were taken by the executive committee in every decision made and action taken regarding the Centre. The old Constitution provided in clause V that three members constitute a quorum and that all matters will be decided by a majority of those present. It was in line with this that the decisions were taken and arrived at. The Applicants having disagreed with the majority decision of the committee taken in June 2014 to embark on a membership drive, submitted a new Constitution and filed returns to update the records of the Centre. They began to antagonise the work of the executive committee and cause confusion by complaining to the Registrar of Societies over the running of the Centre when they had never been actively involved in its running for years. The 2<sup>nd</sup> Respondent and the chairman were the only people involved in its running for years. They were the only people seeing to the day to day running of the Centre all these years until the Applicants raised their complaints. On 1<sup>st</sup> December 2014 the Respondents wrote to the Applicants warning them to desist from running the affairs of the Centre (See exhibit "BP 6").

The affidavit further discloses that after being advised to regularise the Centre's records with the Registrar of Societies the committee is seeking a suitable accountant to bring the Centre's accounts up to date. The committee intends to hold an Annual General Meeting to elect office bearers. The Centre is open every Sunday for prayers as well as twice every lunar month to members of the community. When the Applicants commenced the holding language classes without the knowledge or approval of the executive committee they wrote to the Applicants advising them to make an application for approval so that the classes could be regulated.



The deponent further stated that all the necessary procedures were adhered to and the members of the executive committee entitled to vote were given notice of all the meetings of the committee. The resolutions taken at the meeting held on 11<sup>th</sup> September 2015 were not agreed by the executive committee as he was the only member of the executive committee present at the said meeting and thus there was no general agreement to what was discussed. The conditions arrived at by the majority of one party to the dispute could not be imposed on the executive committee which had only one member present. Thus the Respondents wrote to the office of the Registrar of Societies informing them that they did not agree to or accept the said resolution by letter dated 6<sup>th</sup> October 2015. The said letter was exhibited as "DG 5" in the affidavit in support of this application.

It was further deposed that the interim committee subsequently formed was not duly elected and neither the 1<sup>st</sup> and 2<sup>nd</sup> Respondents nor any of the members of the executive committee were present during the formation. In view of the above the resolutions for the purported interim committee is invalid and has no effect because the said committee was not appointed in line with the Constitution of the Centre. There was no basis upon which the 1<sup>st</sup> Applicant could claim that he is the overall in charge of the 3<sup>rd</sup> Respondent because he was not duly appointed as such and is thus not recognised as such. Further, Swami Vishwatmananda cannot authorise the 1<sup>st</sup> Applicant to act in his stead because the Ramakrishna Mission in India refused the request to be affiliated with the Centre and thus has no involvement in its running.

The affidavit further discloses that the executive committee intended to hold the meeting of 5<sup>th</sup> December 2015 but the meeting was rescheduled. The Applicants were not given notice of the meeting because they are not members of the executive committee. He stated that the resolutions passed on 11<sup>th</sup> September 2015 were not agreed by the executive committee and they are of no force and effect. The Applicants do not have an arguable claim for which they can seek an injunction before this Honourable Court because

they were not duly elected office bearers of the Centre and therefore, they have no interest in its operations. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents have been running the Centre for a number of years for the benefit of the members of the community and the Applicants have not shown that any action contrary to the objectives of the Centre have been taken.

The Applicants filed an affidavit in reply sworn by Diptis Ghosi, the 1<sup>st</sup> Applicant herein dated 12<sup>th</sup> January 2016. In his affidavit the deponent stated that it was not clear to him what the 2<sup>nd</sup> Respondent's actual names are considering that on the official documentation written on behalf of the 3<sup>rd</sup> Respondent, he refers to himself as Baburao Patel, which is the name he has been sued under, whilst the affidavit in opposition is deposed to by one Navnitlal Balubhai Patel who states that he is the 2<sup>nd</sup> Respondent herein. The Respondents are attempting to mislead this Honourable Court into thinking that there is a society by the name of Hindu Veda Centre that has succeeded the 3<sup>rd</sup> Respondent. The correct position is that the 3<sup>rd</sup> Respondent has not been deregistered by the Registrar of Societies nor has it been replaced by the Hindu Veda Centre. (See exhibit DG 11)

The affidavit discloses that the source of funding of the building of the Centre as alleged in paragraph 6 of the affidavit in opposition of this application was not in dispute save to state that founding members of the Centre desired and built the Centre based on the fundamental truths of the Ramakrishna Movement as stated by Swami Vivekananda and to give credibility to the process, the permanent position of a Monk from Ramakrishna Mission in the running of the Centre was created in the Constitution. This purpose is clear from the objects of the Centre as stated in its Constitution as was drafted by the founding members. The deponent denied there being a new and old Constitution of the Centre. The prevailing Constitution of the Centre is "DG1" considering the view that the new Constitution referred to in the affidavit in opposition is that of the Hindu Veda Centre, which is not a registered society and is therefore non-existent.

The deponent repeated paragraph 8 of the affidavit in support and added that the founding members who built the Centre from funds donated by them and well wishers had no intention of forming another Association apart from the Centre whose purpose was to propagate the philosophy of the Ramakrishna Mission as stated by Swami Vivekananda, as per the objective of the founding Constitution which subsists to date. With regard to the letter dated 25<sup>th</sup> July 2002 ("BP1") the same was only sent by the Secretary-General of the Mission following the mistreatment of the Monk sent by the Ramakrishna Mission by the management as per paragraph 13 of the affidavit in support of this application.

The affidavit also discloses that following the withdraw of the Centre's affiliation to the Mission; the purported executive committee did not take any steps to get back the affiliation despite efforts by the 1<sup>st</sup> and the 2<sup>nd</sup> Applicants to have it renewed. Notwithstanding, the affiliation to the principles of the Ramakrishna Mission are still evident at the Centre where there are sketches of the Ramakrishna Vivekananda and Mother Sarada prominently displayed at the Temple and Prayers to the trinity which are performed by the 1<sup>st</sup> and 2<sup>nd</sup> Applicants, with the assistance of the other devotees. The position of the Ramakrishna Mission was also recognised by the erstwhile committee as late as August 2013 when they invited the Monk from Ramakrishna Mission to come and preside over the function to commemorate the 150<sup>th</sup> birthday anniversary of Swami Vivekananda and also referred the disputed case of allowing the construction in the premises of the Centre which was vehemently opposed by the 1<sup>st</sup> and 2<sup>nd</sup> Applicants together with other devotees and friends of the Centre for a decision. (See exhibit "DG13").

The deponent further states that the letter from the Registrar of Societies advising that a new list of office bearers and the need to amend the Constitution was seized by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as an opportunity for them to dissolve the Centre as they do not believe in the Ramakrishna Movement and resolution marked "BP3" submitted to the Registrar of

Societies, which resolution the Applicants did not sign as committee members, was circulated to achieve this ulterior motive when the Registrar of Societies had merely suggested an amendment and not an overhaul of the Constitution resulting in the creation of the whole new society. The Constitution was accepted for registration and that its validity has never been challenged by the Registrar of Societies from the time of registration of the Centre to date. It still therefore remains as the only undisputed Constitution of the Centre. The executive committee referred to is not recognised by the Constitution of the Centre which provided for the Centre to be run by a managing committee which will be elected at a General Meeting to be held once every three years. The executive committee having been formulated outside the guidelines set out in the Constitution is consequently not a valid committee to which the affairs of the Centre can be entrusted. The purported meetings of the illegal executive committee to change the name of the Centre and approve a new Constitution are void and are of no effect.

The affidavit also discloses that filing of the purported new Constitution of the Hindu Veda Centre with the Registrar of Societies on 9<sup>th</sup> June 2015 cannot make it effective in view of the illegality of the executive committee that approved it and the lack of the recognition of the Hindu Veda Centre by the Registrar of Societies who has confirmed that such a society does not exist. It was not possible for a committee such as the executive committee, which came into existence and has continued to be in existence contrary to the provisions of a recognised Constitution of the Centre to take any legal steps in relation to the Centre. The Applicants came to Zambia from India in December 1984. Since then, they have been active members of the Centre who have organised prayers and other social services at the Centre and faithfully fulfilled all assignments that were given to them by the purported executive committee. It was in recognition of this faithful service that the Swami Vimkshananda advised the purported executive committee to use the services of the 1<sup>st</sup> Applicant to prepare pending accounts for the Centre

which advice was rejected by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents for reasons best known to themselves.

It was further deposed that the Applicants' complaints are not meant to antagonise the work of the purported executive committee or to cause confusion as alleged, but to ensure that the Centre is run in a manner envisioned by the Constitution. This was more so considering that the membership drive embarked on by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents was contrary to clause III(a) of the Constitution of the Centre. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents have repeatedly made it clear that they are not interested in nor are they ready to work harmoniously to promote the objects of the Centre which was established in order to manifest the divine within each interested individual in Zambia through a deeper understanding of various religious and philosophical movements of the world, while the objective of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and their unregistered Hindu Veda Centre is to promote the Hindu Religion exclusively which is contrary to the purpose and objective of the Ramakrishna Movement. This was evident from their draft Constitution of the Hindu Veda Centre, which they hope to replace the Centre with, in clause 10 thereof where there is a clear departure from the principles upon which the founding members established and drafted the Centre's Constitution. In view of this the deponent doubted the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' eligibility for membership of the Centre (see exhibit "DG12").

The affidavit also discloses that the Applicants noticed this departure from the principles upon which the Centre was founded and the Constitution and merely wanted order to be restored to the Centre. The purported executive committee cannot hold a general meeting to elect new office bearers as the existing members are not appointed in line with the Constitution of the Centre hence they are in office illegally. Any general meeting of the centre can only be convened through the interim committee in the circumstances. Consequently, decisions made and resolutions passed at meetings of the illegal executive committee are of no force and effect. The purported executive committee is in existence illegally hence the directive of the

Registrar of Societies as to the formation of an interim executive committee to pave way for the election of legally appointed management committee in accordance with the Constitution. The legitimacy of the interim committee is derived from the directive of the Registrar of Societies hence the non attendance of the members of the illegal executive committee at the meeting at which the members of the interim committee cannot invalidate its legitimacy.

It was further deposed that the interim committee does not purport to derive its legitimacy from the Constitution of the Centre but from the directive of the Registrar of Societies which directive was aimed at ensuring that the affairs of the Centre are now run in accordance with its Constitution. The purported executive committee itself was not appointed in line with the Constitution hence the need for the formation of an interim committee to oversee and run the Centre pending the appointment of a managing committee which would be elected in accordance with the requirement of the Constitution. The refusal by the Ramakrishna Mission in India to affiliate the Centre does not detract from the fact that the Constitution of the Centre specifically provides for the Spiritual Director to be appointed by the Ramakrishna Mission. This was the reason why the Ramakrishna Mission sent Swami Brahmeshananda to Zambia as the Centre's Spiritual Director at the request of the purported executive committee in 2001. In view of the foregoing and in accordance with clause VI (a) of the Constitution Swami Vishwamananda was sent by the Ramakrishna Mission as the Centre's spiritual director in 2015 at the request of the Applicants and other devotees. Swami Vishwamananda was to meet with the Registrar of Societies and to survey the purported executive committee in order for the Centre to be affiliated to the Mission, Swami Vishwamananda by his email dated 23<sup>rd</sup> September 2015 marked as exhibit "DG10" authorised the deponent to represent the Ramakrishna Mission in his place.

The affidavit further discloses that the Applicants herein were unilaterally removed as members of the purported executive committee because of the

Applicant's insistence on adherence to the principles upon which the Centre was founded. The Applicants have an arguable claim for which the ex-parte injunction they obtained on 5<sup>th</sup> December 2015 should be confirmed. The Centre was being run by the purported executive committee which is not recognised by the Registrar of Societies or the 3<sup>rd</sup> Respondent's Constitution, was not elected to office in accordance with the Constitution and whose membership is not eligible for admission to the membership of the Centre or as members of the Centre's management committee as they do not believe in the philosophy of the Ramakrishna movement resulting in their running of the Centre contrary to the principles upon which the Centre was founded and the objective enunciated in its Constitution.

It was deposed that on behalf of themselves and the other devotees and believers of the Ramakrishna Movement, the Applicants wish to realign the operations of the Centre to the objectives for which it was formed by the founding members as evidenced in its Constitution. In this regard the Applicants have been able to raise enough interest among likeminded people and are confident about the success of a membership drive which will draw people who are confident about the success of a membership drive which will draw people who believe in the philosophy of the Ramakrishna Movement regardless of their religious conviction. This can only be accomplished in the absence of the erstwhile committee and their supporters who wish to restrict the Centre exclusively to Hindus. If the ex-parte injunction is not confirmed, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents will proceed to destroy the Centre to the detriment of many devotees of the Ramakrishna Movement who would otherwise benefit from the social services that the Ramakrishna Movement is famous for offering around the world in 171 countries where it has centres. This will result in great loss to the Applicants and other devotees as well as people of Zambia at large who wish to join the Ramakrishna Movement and learn about the different religious and philosophical movement of the world whilst maintaining their religious beliefs without relinquishing them to become members of the Hindu religion.

The affidavit further discloses that the balance of convenience should be weighed in favour of the Applicants as the 1<sup>st</sup> and 2<sup>nd</sup> Respondents can form and operate their Hindu Veda Centre as an independent society and restrict its membership to whomever they wish. This is more so considering that they are involved in an association called HSCT which was granted its own land in Makeni on which the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and their supporters can construct a temple and carry out their desired activities without destroying the Centre which has been existence for 49 years now. The Interim Committee of the Centre is committed to fulfil the objectives for which the purported executive committee is running the Centre contrary to its objectives as set out in the Constitution. This is compounded by the action taken by the purported executive Committee to attempt to change the name and nature of the Centre contrary to the principles upon which the Centre was founded. The interim injunction was necessary to maintain the status quo of the Centre's existence pending the determination of the main matter.

When this matter came up for hearing of the inter partes application for an interim injunction on 14<sup>th</sup> January 2015, both parties relied on their respective skeleton arguments and were supplemented by viva voce arguments. For the Applicants, the gist of their arguments in support of their application is that the Centre was registered as a society in Zambia for the purpose of propagating the fundamental truths of the Ramakrishna Mission as stated in the Constitution of the Centre. It was argued that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' purported executive committee was going against the Constitutional provisions of the Centre and its objectives. As such an interim injunction was necessary to prevent the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from running the Centre in the manner contrary of the Centre's objectives. Counsel submitted that the Applicants as members of the Centre and believers in the Ramakrishna Movement have a clear and arguable right to the reliefs sought in the originating process to ensure that the Centre is not destroyed and run in accordance with the purpose for which it was created. Further, that the Applicants do not have to be office bearers of the Centre to



satisfy the requirement of clear and arguable case however notwithstanding the 2<sup>nd</sup> Applicant is the president of the interim committee appointed on 15<sup>th</sup> September 2015 and the 1<sup>st</sup> Applicant was mandated to represent the Centre's spiritual director until new office bearers are elected in line with the Constitution. The Court was referred to paragraph (f) of exhibit "DG7". It was argued that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and other members of the purported executive committee have failed to demonstrate before this Court that they are duly elected office bearers in line with the Constitution hence it becomes imperative for an interim injunction to be granted. In this regard the case of **Hilary Bernard Mukosa v Michael Ronaldson**<sup>1</sup> was cited in aid wherein it was stated at page 28 that:-

***"An Injunction will only be granted to a Plaintiff who establishes that he has a good and arguable claim to the right he seeks to protect..."***

In line with the above authority it was argued that the Applicants being members and believers of the Ramakrishna Movement as well as members of the interim committee following the directive of the Registrar of Societies have a good and arguable case to the relief sought.

With regard to the requirement of irreparable loss, it was argued that the Applicants as devotees would suffer irreparable loss if the injunction is not confirmed as the 1<sup>st</sup> and 2<sup>nd</sup> Respondents will go ahead and change the Constitution and the name of the Centre unhindered. It was argued that the irreparable loss lies in the fact that the Hindu Veda Centre which the 1<sup>st</sup> and 2<sup>nd</sup> Respondents want to register does not recognise the Ramakrishna Movement. This can be seen in the cursory perusal of the Constitution of the Hindu Veda Centre's objectives in the draft Constitution attached in the affidavit in opposition. It was submitted on behalf of the Applicants that an injunction was therefore necessary to preserve the status quo pending the determination of the matter. The case of **Turnkey Properties v Lusaka West Development Company Limited and Zambia State Insurance**

**Corporation Limited**<sup>2</sup> was relied on to support this line of argument. In this regard it was submitted on behalf of the Applicants that the status quo sought to be preserved by an order of interim injunction is the continued existence of the Ramakrishna Vedanta Centre through its registered name and Constitution otherwise it will be deregistered and replaced with the Hindu Veda Centre which is premised on a different objective and philosophy from that of that of the Centre.

Counsel further cited the case of **BP Zambia Limited v Conidaris and Others**<sup>3</sup> and argued that the Applicants have a clear and arguable claim to the relief sought through the confirmation of the interim injunction and they have shown the loss which they will suffer if the injunction is not confirmed as the Centre that has been in existence for 49 years now will be destroyed and replaced with a society that is not embracing the philosophy of the Ramakrishna Movement that was originally embraced. This loss cannot be atoned for by damages.

With regard to the balance of convenience, it was argued on behalf of the Applicants that the balance of convenience lies in favour of the Applicants herein as the loss they are likely to suffer in the event that the ex-parte order is vacated is far greater than the loss that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents will suffer. Counsel cited the case of **Turnkey Properties v Lusaka West Development, BSK Chiti and Zambia State Insurance Limited**<sup>2</sup> and argued that the loss which the Centre which follows the teachings of Swami Vivekananda and loss of affiliation to the Ramakrishna Mission is real whilst the loss that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents will suffer is not. It was contended that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have confirmed in writing that they do not believe in the purpose and objectives of the Centre's Constitution which they consider outdated nor do they wish to be affiliated to the Ramakrishna Mission. On the other hand the 1<sup>st</sup> and 2<sup>nd</sup> Respondents can register the Hindu Veda Centre as a new and separate society without destroying a Society that has been in existence for over 49 years. The Hindu Veda Centre is not yet registered and has narrower membership criteria as it is intended

solely for people of Hindu religion thereby having limited social purpose in comparison to the Centre. Counsel submitted that the Applicants have satisfied the requirements for the grant of an interim injunction and urged this Court to confirm its ex-parte order of interim injunction.

On behalf of the Respondents, it was submitted that the Applicants have not satisfied the principles that govern the grant of an application for an interim injunction. It was submitted that the Applicants have failed to establish a clear and arguable right to the relief sought because they are not duly elected members of the Ramakrishna Vedanta Centre. The resolutions taken at the office of the Registrar of societies on 11<sup>th</sup> September 2015 on which the applicants base their appointments as members of the interim committee were taken in the absence of the majority of the existing executive committee and they are opposed by them by letter dated 16<sup>th</sup> October 2015 addressed to the Registrar of Societies.

With regard to the requirement of balance of convenience, counsel cited the case of **Turnkey Properties v Lusaka West Development and Others**<sup>2</sup> (cited above) where it was held that:

***“that an application for an interlocutory injunction pending trial in circumstances and on facts where it was necessary to weigh the contending rights and to find where the balance of convenience to the parties lay... the onus was on the applicant to establish that the greater inconvenience pointed in his direction.”***

In line with the above authority, it was submitted that that the balance of convenience in the present case weighs in the Respondents' favour as duly appointed members of the Centre who have been running it for a number of years for the benefit of the members of the community. It was argued on behalf of the Respondents that the Applicants have not shown that greater

inconvenience points in their direction and thus an interim injunction is not necessary in the circumstance.

Counsel referred this Court to the case of **Turnkey Properties<sup>2</sup>** cited above wherein it was held that:

***“an interlocutory injunction should not be regarded as a device by which the applicants can attain or create new and favourable conditions only to himself”.***

It was submitted that the Applicants are using these proceedings to create conditions favourable to themselves and detrimental to the interests of the Respondents by using this application to sanction the existence of an interim committee that is opposed by the existing members of the executive committee of the Centre. Counsel prayed that this court discharges the ex-parte injunction of 5<sup>th</sup> December 2015 to be discharged with costs to the Respondent.

In response to the arguments on behalf of the Respondents, Mrs. Mutuna submitted that the Centre only has one recognised Constitution that is (exhibit “DG1”) which was registered with the Registrar of Societies in 1974. The purported Constitution relating to the Hindu Veda Centre which is an unregistered society as per the letter from the Registrar of Societies marked “DG11”. She submitted that the only recognised Constitution of the Centre provides that the Centre will be run by the management committee whose head will be the Spiritual Director appointed by the Ramakrishna Movement and the said members will be elected every two years. It was submitted that the purported executive committee of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is not a creature of the Constitution of the Centre. Having failed to hold elections every three years, it is existing and operating contrary to the provisions of the Centre. Therefore, it has no capacity to run the affairs of the Centre whereas the Applicants and members of the interim committee constituted pursuant to a directive from the Registrar of Societies who required an

interim committee to run the affairs of the Centre pending the holding of a general election at which duly appointed office bearers would be elected.

With regard to the argument that the application have not satisfied all the grounds necessary for the grant of an injunction, Counsel submitted that the Applicants have shown that they have a clear right to the relief sought in the main matter; that they will suffer irreparable injury if the ex-parte order for an interim injunction is not granted; and further, that the balance of convenience lies in their favour. Counsel submitted that this is an appropriate case for this Court to confirm the interim order of injunction.

I have considered the evidence on record, skeleton arguments, authorities cited and the oral submissions of counsel. There is a plethora of authorities on the principles governing injunctive relief, most of which have been cited by counsel for both parties. These principles were laid down by our Supreme Court in the case of **Shell and BP (Z) Limited v Conidaris and Other**<sup>3</sup> in the following terms:

***“A court will not generally grant an interlocutory 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 in injury which is substantial and can never be atoned for by damages.”***

And in the English case of **Preston v Luck**<sup>4</sup>, Cotton L. J. stated at pages 506 as follows:

***“Of course, to entitle the plaintiff to an interlocutory injunction, though the Court is not called upon to decide finally on the right of the parties, it is necessary that the court should be satisfied that there is a serious question to be tried at the hearing and that on the facts before it, there is a probability that the plaintiffs are entitled to relief.”***

Further, the American **Cynamid Company Limited v Ethicon Limited**<sup>5</sup> case is renowned for establishing the three stage test that should be followed when granting an injunction. The first test is that there must be a serious dispute between the parties and the plaintiff must show on the material before the court, that he has prospects of succeeding at the trial. The second test is, would the claimant be adequately compensated by an award of damages at the trial. The court must be satisfied that there will be irreparable harm if the injunction is denied. Thirdly, the court must consider if the grant of an injunction will favour the balance of convenience. Therefore, if there is doubt as to the adequacy of the respective remedies available to either party, the court must consider the balance of convenience by determining where it lies or in whose favour the scale tilts and whether, more harm would be done by granting or refusing to grant the injunction. It must be pointed out, however, that an applicant need not satisfy all the principles in order to succeed.

The first question to be considered is whether the Applicants' right to relief is clear. Related to this question is whether there is a serious issue to be tried. In the Applicants' affidavits in support of the originating summons and the interim injunction, the Applicants have made various allegations. They allege, among other things, that they are devotees of the Centre (3<sup>rd</sup> Respondent) which was registered on 14<sup>th</sup> January, 1974 for the purpose of propagating the fundamental truths of the Ramakrishna Movement which aims to promote the spiritual and well being of followers; the Centre has not audited its accounts since 2006; the Centre Hall rooms meant for supervising or visiting Monks are rented out from time to time in breach of the Societies Act Cap 119; the Temple at the Centre is locked during the course of the week and is only open for 2 hours on Sunday, as a consequence of which worship services during the week have to take place in the corridor in breach of clause II(e) of the Constitution; the 1<sup>st</sup> and 2<sup>nd</sup> Respondents do not wish to be affiliated to the Mission and have consequently denied visiting Monks from the Mission to access the Monk's

quarters at the Centre in breach of clause II(h) of the Constitution; and that the Centre does not carry out any of the social outreach programmes envisaged in clause II(d) of the Constitution and efforts by the Applicants and other devotees to hold language classes for children have been frustrated by the 1<sup>st</sup> Respondent's refusal to give access to the Centre Hall.

The Applicants further allege that all the Centre's objectives as per clause II of the Constitution have been breached by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, as the 1<sup>st</sup> Respondent with the support of the 2<sup>nd</sup> Respondent has resorted to keeping the keys to the Temple himself; the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in an effort to destroy the Centre so that its mission can no longer be carried out, have been carrying out meetings in the absence of the Applicants although the latter were appointed as members of the interim executive committee; at the said meetings, it was resolved that the Centre should change to Hindu Vedanta Centre and that a commercial block be constructed on the Centre's property under an association known as the Human Service Trust (HST) and to change the Constitution of the Centre to align it to the objectives of the Hindu Centre of HST the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and their unregistered Hindu Veda Centre intend to promote the Hindu religion contrary to the purpose and objective of the Ramakrishna Movement; the 1<sup>st</sup> Applicant is the overall in-charge of the Centre as the duly authorised representative of the mission; the 1<sup>st</sup> and 2<sup>nd</sup> Respondents intended to have a general meeting on 5<sup>th</sup> December, 2015 at 18.30 hours but neither the Applicants nor other committee members had been given notice of the meeting nor was the agenda circulated to them; the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were intent on ignoring resolutions passed at the office of the Registrar of Societies on 11<sup>th</sup> September, 2015; The 1<sup>st</sup> and 2<sup>nd</sup> Respondents' executive committee cannot hold a general meeting because they were not appointed in accordance with the Constitution of the Centre; the said executive committee members are in office illegally, hence the directive of the Registrar of Societies to form an interim executive committee to pave way for the election of a legally appointed management committee in accordance with the Constitution; any general meeting of the Centre can only be convened through the interim

committee whose legitimacy derives from the directive of the Registrar of Societies; and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had not been convening meetings every 3 years contrary to the provisions of the Constitution. For the foregoing reasons, the 1<sup>st</sup> and 2<sup>nd</sup> Applicants pray for an interim injunction to preserve the status quo of the Centre and give effect to the direction of the Registrar of Societies pending final determination of this matter.

As expected, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents deny the Applicants' allegations. In accordance with the guidance given in the **Turnkey Properties Limited<sup>2</sup>** case, I cannot delve into the substance of the allegations at this interlocutory stage. Suffice it to state that in my considered opinion, the various allegations made by the Applicants which I have stated above and the long affidavits filed by both sides clearly suggest that there are serious disputes between the parties which must be determined by the Court at the main hearing. In addition, I am also satisfied that from the facts on record, and in particular, the evidence of the Applicants that they are members and believers of Ramakrishna Movements and members of the interim committee following the directive of the Registrar of Societies, the Applicants' right to relief is clear. I therefore do not find any merit in the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' arguments that the Applicants have failed to establish a clear and arguable right to relief because they are not elected members of the Centre.

As regards irreparable loss, it was submitted by counsel for the Applicants that this lies in the fact that the Hindu Veda Centre which the 1<sup>st</sup> and 2<sup>nd</sup> Respondents want to register and replace the Centre with does not recognise the Ramakrishna Movement. Accordingly, it was contended that if the injunction is not confirmed, they will suffer irreparable loss as the Centre that has been existing for 49 years will be destroyed and replaced with a society that does not embrace the philosophy of the Ramakrishna Movement. I cannot agree more with the Applicants that such a loss cannot be atoned for by damages. There can be no doubt therefore, that this requires that the status quo must be maintained pending final determination of the main dispute.



It was submitted on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that the balance of convenience weighs in the Respondents' favour as duly appointed members of the Centre who have been running it for many years and that the Applicants are using these proceedings to create conditions favourable to themselves and detrimental to their interests. On behalf of the Applicants, counsel argued that the executive committee of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is not a creature of the Constitution of the Centre while the Applicants are members of the interim committee constituted pursuant to the Registrar of Societies' directive to run the affairs pending the holding of a general meeting at which duly appointed office bearers would be elected. A determination of these arguments will require delving into the merits of the dispute which I am incompetent to do at this stage. It however, suffices to state that given the conclusions I have reached above on the other two tests, I find it otiose to make a determination on the balance of convenience as the Applicants have already satisfied the requirements for the grant of injunctive relief.

In the final analysis, I have come to the ineluctable conclusion that this is a proper case where the Court can exercise its discretion to grant an interim injunction. Accordingly, it follows that the ex parte order of interim injunction I granted on 5<sup>th</sup> December, 2015 must be confirmed and it is so ordered. Costs shall be for the Applicants.

**DELIVERED THIS 9<sup>TH</sup> DAY OF FEBRUARY, 2016.**

  
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**C. KAJIMANGA**  
**JUDGE**