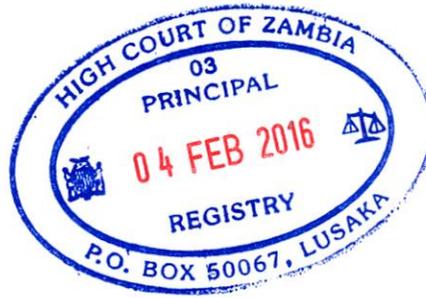


IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA

2015/HP/2298

(Civil Jurisdiction)



BETWEEN:

HASEENAH ADAM PATEL

PLAINTIFF

AND

ZARINA LETITIA PATEL

DEFENDANT

Before the Hon. Mrs. Justice A. M. Sitali on the 4th day of February, 2016.

For the Plaintiff : Mr G. Phiri of PNP Advocates

For the Defendant : Miss M. Kalela, Legal Aid Counsel

R U L I N G

Legislation referred to:

The High Court Rules, Chapter 27 of the Laws of Zambia, Order XXVII rule 4.

This is the plaintiff's application for an order of injunction to restrain the defendant from threatening, assaulting or coming close to the plaintiff pending the determination of this matter or until further order of this Court.

The application is made by way of ex-parte summons for an order of injunction and is supported by an affidavit sworn by Haseenah Adam Patel, the plaintiff. The brief facts leading to the application as deposed to by the plaintiff are that on 15th November, 2015 around 21:30 hours she was assaulted by the defendant who slapped her on the face and grabbed her by the hair and threw her to the kitchen floor with force. She then sat on her tummy and continued to hit her on the head causing her to sustain injuries. This followed an altercation between the defendant and the plaintiff's father.

When the defendant was finally pulled off the plaintiff's stomach she grabbed a gun from the kitchen table and threatened to shoot everyone in the house. The plaintiff's father wrestled the gun from the defendant and secured it in the safe. The plaintiff asserted that the defendant has been rude and discourteous towards her and that she lives in fear of her, knowing that the defendant intensely dislikes her. She stated that the thought of the manner in which the defendant attacked and assaulted her still leaves her feeling cold and extremely terrified and apprehensive that she may repeat the assault. As the parties live in the same home which the defendant has temporarily deserted, the plaintiff prays that she may be granted an injunction to restrain the defendant from threatening or assaulting her any further and from coming close to her pending the determination of this matter.

The defendant filed an affidavit in opposition on 22nd December, 2015 in which she denied ever assaulting the plaintiff and explained that on the material date the plaintiff found her father (the defendant's husband)

choking her and joined in assaulting her. The defendant asserted that in trying to save herself she pushed the plaintiff who fell and sustained the injuries which she alleges the defendant inflicted on her. She further denied grabbing the gun and threatening the plaintiff and her father with it and said it was her husband who got the gun and gave it to the plaintiff and her cousin. She asserted that she has raised the plaintiff from the age of six years and has lived with her for the past 13 years. She stated that she has not left her matrimonial but was infact chased by her husband. She urges that the order of injunction should not be granted as it will interfere with her desire to have the plaintiff relate with the defendant's three children who are her siblings.

In her affidavit in reply filed on 19th January, 2016, the plaintiff reiterated that the defendant had viciously assaulted her and denied that she goes to the defendant's mother's home to drop the children. She further stated that although the defendant had raised her from the age of six years, she had constantly assaulted her. She prayed that the order of injunction be granted.

At the hearing Mr Phiri counsel for the plainitff relied entirely on the plaintiff's affidavit in support and in reply and did not make any submissions. He prayed that the injuction be granted for the reasons stated in the affidavit in support of the application.

In opposing the application, Miss Kalela counsel for the defendant also relied entirely on the affidavit in opposition and did not make any oral submissions. She prayed that the application be dismissed.

I have considered the affidavit evidence of both parties herein. From the said evidence it is clear to me that the plaintiff did suffer injuries as a result of an assault on her by the defendant. I say so because the defendant admits pushing the plaintiff thereby causing her to fall to the ground. Her explanation is that she did so to protect herself from the plaintiff who joined her father in choking her. The defendant also confirmed that there was a struggle for a gun during the fracas. Given the facts of the case as stated by the parties I am satisfied that the plaintiff's fear of the defendant is justified and that an injunction is necessary to protect her from any repeated or continued assault on her by the defendant. The protection is all the more necessary as both the plaintiff and the defendant allude to the presence of a gun during the altercation.

I therefore confirm the order of interim injunction which I granted to the plaintiff on 21st December, 2015. I order that the defendant is hereby restrained from threatening, assaulting or coming close to the plaintiff pending the determination of this matter or until further order of this Court.

I award the costs of the application to the plaintiff to be agreed and taxed in default of agreement. Leave to appeal is granted.

Dated the 4th day of February, 2016.



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A. M. SITALI
JUDGE