

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

2015/HP/1414

BETWEEN:

MARTIN SIWALE 1<sup>ST</sup> PLAINTIFF  
MARS LOGISTICS WORLDWIDE LIMITED 2<sup>ND</sup> PLAINTIFF

AND

JONES NDAZYE 1<sup>ST</sup> DEFENDANT  
AGNESS NDAZYE 2<sup>ND</sup> DEFENDANT  
STEVE SIMUTEBA 3<sup>RD</sup> DEFENDANT  
CHARDORE PROPERTIES 4<sup>TH</sup> DEFENDANT  
VISIONARY CAPITAL AND PROPERTY INVESTMENT LIMITED 5<sup>TH</sup> DEFENDANT  
BARCLAYS BANK PLC 6<sup>TH</sup> DEFENDANT



Coram : Honourable Mr. Justice M. M. Kondolo, SC

For the 1<sup>st</sup> Plaintiff : Mr. S. Chikuba of MessrsBCM Legal Practitioners  
For the 1<sup>st</sup> & 2<sup>nd</sup> Defendants : J. Zimba of Messrs, Makebi Zulu Advocates  
3<sup>rd</sup> Defendant : In Person/Absent  
4<sup>th</sup> Defendant : Mrs. B. Chanda of AB & David Advocates  
5<sup>th</sup> Defendant : Ms. M. Chilambwe, Messrs. Mosha & Co.  
6<sup>th</sup> Defendant : I. M. Mabolobolo of Messrs. Makula & Co.

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R U L I N G

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AUTHORITIES

## Legislation

1. Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia

## Cases

1. Gaedonic Automotive Ltd and Another v. Citizens Empowerment Commission SCZ/No. 73/2011
2. Shamwana & Others v. The People (1985) ZR 41
3. Turnkey Properties v Lusaka West Development Company Limited (1984) Z.R.86
4. Mwenya and Randee v Kapinga (1998) S.J. 12 (S.C.)
5. Hunt v Luck (1902) 1 Ch. D.P p 428
6. American Cyanamid v Ethicon (1975) AC 396
7. Shell And BP Zambia Limited v Conidaris and Others (1974) Z.R. 281 (H.C.)
8. Ndove (Harton) v National Education Company (1980) ZR
9. *Garden Cottage Foods Ltd v Milk Marketing Board (1983) 2 All ER 770 Page 783*
10. *Lyons & Sons v Wilkins [1896] 1 Ch 811 at 827,*

For avoidance of doubt, all amounts herein shall be represented in rebased currency of ZK and the proposed subdivision in contention shall be referred to as ‘the **subdivision**’

This is a Ruling on an application, by the Plaintiffs, for an Interim Injunction.

The said application was supported by an Affidavit dated 25<sup>th</sup> August, 2015 and sworn by Martin Siwale wherein he stated that on or about 30<sup>th</sup> May, 2012; the first Defendant commenced an action against the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants for restoration of title relating to property No. LUS 8502, Lusaka (hereinafter referred to as “the **property**”), on account of misrepresentation.

According to the 1<sup>st</sup> Plaintiff, on 13<sup>th</sup> August, 2007 the 1<sup>st</sup> Defendant sold the Plaintiffs the subdivision which was supposed to be subdivided and placed on separate Certificate of Title soon after execution. He further stated that while waiting for the aforesaid process, it came to

his attention that the Plaintiff had obtained a loan of ZK106, 000 from the 4<sup>th</sup> Defendant Company and offered the said property as security.

The 1<sup>st</sup> Plaintiff enquired about this and the 1<sup>st</sup> Defendant confirmed the position but further told the 1<sup>st</sup> Plaintiff that the 4<sup>th</sup> Defendant had fraudulently mortgaged the property to the 6<sup>th</sup> Defendant Company as a third party surety for a loan obtained by the 5<sup>th</sup> Defendant.

The 1<sup>st</sup> Plaintiff then approached the 4<sup>th</sup> Defendant with a view of claiming back the subdivision that was sold to him. The 4<sup>th</sup> Defendant threatened the 1<sup>st</sup> Plaintiff by telling him that if he persisted in trying to reverse the transactions that had occurred over the land, he would end up losing his subdivision.

The 1<sup>st</sup> Plaintiff attested that by employing such threats and misrepresentation, the 4<sup>th</sup> Defendant further told him that if he wished to retain his interest in the property he should buy back the property and the 4<sup>th</sup> Defendant promised that the funds would be used to pay 6<sup>th</sup> Defendant to redeem the mortgage and give the property back to him (the 1<sup>st</sup> Plaintiff).

The 1<sup>st</sup> Plaintiff then engaged the 2<sup>nd</sup> Plaintiff to help him purchase the property from the 1<sup>st</sup> Defendant and a contract of sale was executed between the 2<sup>nd</sup> Plaintiff and the 4<sup>th</sup> Defendant at a total consideration of ZK500, 000. The 1<sup>st</sup> Plaintiff then remitted ZK286, 000 to the 3<sup>rd</sup> and 4<sup>th</sup> Defendant for the purpose of redeeming the mortgage. They failed to honor their promise because instead of redeeming the mortgage they used the money for personal gain and did not have the property reverted back to him.

The Plaintiff further attested that he informed the 6<sup>th</sup> Defendant of the aforesaid events but they did not respond. He was later informed that the 6<sup>th</sup> Defendant was trying to sell off the property to a company called Sheldon Limited.

At that point the 1<sup>st</sup> Plaintiff dashed to Court and on 31<sup>st</sup> August, 2012 **Kabuka, J** granted him an ex-parte Order for Interim Injunction. The matter was later dismissed for want of prosecution

by **Chanda J.** The 1<sup>st</sup> Plaintiff said that he commenced this action before this Court in order for the matter to be determined on its merits.

The 1<sup>st</sup> Plaintiff attested that he should be granted an injunction because, having evaluated the property, the 6<sup>th</sup> Defendant was aware that the Plaintiff was an occupier of the premises and ought to have made inquiries about his interest in the property before purchasing it. He said he was a tenant at the premises throughout the course of the questionable transactions and that he will suffer irreparable damage if this Court does not stop the marketing and sale of the property by way of an injunction. Lastly, and according to the Affidavit, the Plaintiff stated that he has made several developments on the same property and his offices are currently situated there.

In opposition, the 4<sup>th</sup> Defendant filed in an Affidavit dated 16<sup>th</sup> September, 2015, sworn by Ian Chamunora Nyalungwe Haruperi in which he stated that the 4<sup>th</sup> Defendant purchased Stand No. 8502, Lusaka from the 1<sup>st</sup> Defendant in 2010 at a consideration of ZK106, 000. He further attested that after the sale of the property the 1<sup>st</sup> Defendant remained in possession of the property as tenants pursuant to a tenancy agreement that was entered into by the 1<sup>st</sup> Defendant and the 4<sup>th</sup> Defendant Company.

He also confirmed that the 1<sup>st</sup> Plaintiff was a tenant at the subject property and he said that the 1<sup>st</sup> and 4<sup>th</sup> Defendants agreed that the 1<sup>st</sup> Plaintiff would pay rentals of ZK3, 000 every month. The 1<sup>st</sup> Defendant (sic), however, failed to pay any of the agreed rentals and subsequently, in 2011, the 4<sup>th</sup> Defendant decided to sell the property to the 5<sup>th</sup> Defendant who made a down payment towards the purchase price. Before completion of the conveyance, the 5<sup>th</sup> Defendant requested the 4<sup>th</sup> Defendant to use the subject property as security for a facility from the 6<sup>th</sup> Defendant, and the property was thus secured by way of a third party mortgage.

The 4<sup>th</sup> Defendant maintained that it was not aware that the 1<sup>st</sup> Defendant had sold the subdivision to the Plaintiffs. It was also attested that the 4<sup>th</sup> Defendant neither signed nor authorized anybody to sign the contract of sale exhibited by the 2<sup>nd</sup> Plaintiff and that the

purported payment for the purchase of the property was not made to the 4<sup>th</sup> Defendant but to Mass Global Investment Limited an entity not associated or known to the 4<sup>th</sup> Defendant.

The 4<sup>th</sup> Defendant further attested that the 5<sup>th</sup> Defendant is the beneficial owner of the property and that the Plaintiffs have no claim over it. The affidavit states that the third party mortgage was registered on 18<sup>th</sup> October, 2011, two months before the Plaintiffs were allegedly offered the subdivision or the property.

The 5<sup>th</sup> Defendant opposed the application by an Affidavit dated 25<sup>th</sup> September, 2015 sworn by Kabwe Pande stating that the 5<sup>th</sup> Defendant was offered the property by the 4<sup>th</sup> Defendant and after conducting a search and confirming that the property belonged to the 4<sup>th</sup> Defendant. The 5<sup>th</sup> Defendant thereafter obtained a facility of ZK1, 300,000 from the 6<sup>th</sup> Defendant and the property was placed under a third party mortgage.

The 5<sup>th</sup> Defendant made a down payment of ZK500, 000 towards the purchase price leaving a balance of ZK300, 000 to be settled within six months after which vacant possession would be yielded. However, before the balance was paid the Plaintiffs commenced Court Proceedings under Cause No. 2012/HP/0567 which matter was dismissed and the Plaintiffs have commenced this fresh action. The Court actions have negatively affected the 5<sup>th</sup> Defendant whose core business is property development.

Mr. Pande averred that the 5<sup>th</sup> Defendant was a *bonafide* purchaser for value because the Plaintiffs had not registered its purported interest in accordance with the law and have not demonstrated a clear right of claim to warrant an order of injunction. Lastly, he stated that the 5<sup>th</sup> Defendant has suffered irreparable damage to business as it has obligations towards the 4<sup>th</sup> and 6<sup>th</sup> Defendant as a purchaser of the property is frustrated.

The 6<sup>th</sup> Defendant filed in an Affidavit in opposition dated 25<sup>th</sup> September, 2015 deposed to by one Beene Kaoma who stated that in 2011, the 5<sup>th</sup> Defendant obtained the sum of ZK1,300,000 from the 6<sup>th</sup> Defendant and a third party mortgage was created over Stand No. 8502, Lusaka as

security for the loan. He attested that at that time no interest or encumbrance was registered against the property. He further attested that no fraudulent act was committed by the 6<sup>th</sup> Defendant and that the 5<sup>th</sup> Defendant has defaulted on its loan obligation which now stands at ZK1,511, 789.13 hence the urgent need by the 6<sup>th</sup> Defendant to enforce the security.

The 6<sup>th</sup> Defendant added that that if the Interim Injunction is granted, it will suffer great loss as it will be unable to enforce its rights as *bonafide* mortgagee and more so, the Plaintiffs' interest is only over the subdivision and that the claim for the injunction must not be granted.

At the hearing, Counsel for the Plaintiffs, Mr. Chikuba relied on the Summons and Affidavit in support thereof dated 25<sup>th</sup> August 2015 and told the Court that all the parties herein were in Court earlier under Cause No. 2012/HP/576 but the matter was dismissed without proceeding to trial. He said the facts were exactly the same and so were the Parties save for the fact the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein were the Plaintiffs in that matter and the rest of the parties were Defendants.

He argued that the parties were at liberty to bring the matter back to Court because it was not argued on the merits and in support of this he cited the case of **Gaedonic Automotive Ltd and Another v. Citizens Empowerment Commission**<sup>1</sup>. He further told the Court that the earlier Court granted an injunction to the 5<sup>th</sup> and 6<sup>th</sup> Defendants, the Plaintiffs herein, and he invited the Court to take Judicial Notice of the elaborate ruling by Judge Kabuka in that matter and relied on the holding in the case of **Shamwana & Others v. The People**<sup>2</sup> where the Supreme Court held that in an appropriate case, where facts should be judicially noticed after an enquiry has been made, a Judge has power to look not only at his own records but also those of another Judge and to take Judicial Notice of their contents.

Mr. Chikuba pointed out that the Plaintiffs were tenants conducting business on the premises and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had sold them the portion they occupied on the premises. He

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<sup>1</sup> Gaedonic Automotive Ltd and Another v. Citizens Empowerment Commission SCZ/No. 73/2011

<sup>2</sup> Shamwana & Others v. The People (1985) ZR 41

said this was before any of the other parties appeared on the scene and the Plaintiffs were still in occupation and conducting business there.

Mr. Chikuba urged the Court to maintain the *status quo* because the Plaintiffs faced the risk of being ejected from the property which might then be sold off by the 6<sup>th</sup> Defendant. He cited the case of **Turnkey Properties v Lusaka West Development Company Limited**<sup>3</sup> wherein it was held that, an interlocutory injunction is appropriate for the restoration or preservation of a particular situation pending trial.

He further submitted that being ejected from the land would result in irreparable injury to the Plaintiffs and no form of damages would suffice. He relied on the case of **Mwenya v. Kapinga**<sup>4</sup> case which cited the English case of **Hunt v. Luck**<sup>5</sup> wherein it was held that, occupation of land by a Tenant affects a purchaser of land with constructive notice of all that tenant's rights including an agreement for sale to him by the vendor.

He closed by saying that he argued that the Plaintiffs were such tenants and the case was arguable on the merits therefore the injunction should be confirmed with costs.

Mr. Zimba, Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendant, drew the Court's attention to the record and indicated that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were not opposing the confirmation of the injunction for the reason that the issues raised in the Plaintiffs Statement of Claim are issues that can be settled by an inquiry of this Court through trial and in the interim, the subject matter of the inquiry ought to be preserved pending the same inquiry.

With respect to the 4<sup>th</sup> Defendant, Ms. Chanda submitted that the 4<sup>th</sup> Defendant bought the property from the 1<sup>st</sup> Defendant and stood in the capacity of beneficial owner of the property and unlike the Plaintiffs; the 4<sup>th</sup> Defendant was issued with a Certificate of Title which is conclusive evidence of ownership. She submitted that there was no lawful basis for the

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<sup>3</sup> Turnkey Properties v Lusaka West Development Company Limited (1984) Z.R.86

<sup>4</sup> Mwenya and Randee v Kapinga (1998) S.J. 12 (S.C.)

<sup>5</sup> Hunt v Luck (1902) 1 Ch. D.P p 428

Plaintiffs to restrain the 4<sup>th</sup> Defendant from the property as they were the beneficial owner of the property and she prayed that the application be dismissed with costs.

Ms. Chilambwe, Counsel for the 5<sup>th</sup> Defendant submitted that they only proceeded with the transaction to purchase the property from the 4<sup>th</sup> Defendant after a due diligence search at the Ministry of Lands which confirmed that the Certificate of Title was registered to the 4<sup>th</sup> Defendant. She told the Court that on 20<sup>th</sup> March 2012 the 5<sup>th</sup> Defendant issued the tenants with a Notice to vacate and she reiterated that the current Court process has adversely affected the 5<sup>th</sup> Defendants' core business, which is property development.

She further submitted that the interim order of injunction granted to the Plaintiffs was causing irreparable damage to the 5<sup>th</sup> Defendant as well as frustrating its obligations to the 4<sup>th</sup> and 6<sup>th</sup> Defendants. She prayed that this application be dismissed as the Plaintiffs have failed to demonstrate a clear right of claim.

On behalf of the 6<sup>th</sup> Defendant, learned counsel Mr. Mabolobolo pointed out that there was no possibility that the 6<sup>th</sup> Defendant acted fraudulently. This was because of the fact that at the material time the 6<sup>th</sup> Defendant had no connection with the Plaintiffs and that when the 3rd Party Mortgage was created there was no encumbrance or interest on the property.

He further told the Court that the 6<sup>th</sup> Defendant urgently needs to exercise its rights as *bonafide* mortgagee because the 5<sup>th</sup> Defendant has defaulted and the debt is in excess of ZK1.5 million. He further told the Court that the Plaintiffs interest was only with respect to the subdivision of the mortgaged premises and that granting an injunction over the whole property will greatly prejudice the 6<sup>th</sup> Defendant and be akin to creating conditions favorable only to the Plaintiff in total disregard of the 6<sup>th</sup> Defendants rights.

He further argued that in the unlikely event that the Court should at trial find that the Plaintiff is entitled to the subdivision, the Plaintiffs' rights would not extend beyond the portion they



were claiming. He submitted that in the circumstances granting the application will greatly injure and prejudice the Defendants' interests in this matter.

In reply, Mr. Chikuba stated that it remained that all the Defendants opposing the application came into the picture after the Plaintiffs had purchased the subdivision. He said that as shown in **Hunt v. Luck**<sup>6</sup>, 3rd parties can only take the property subject to the Plaintiffs' rights including rights pertaining to an agreement for sale. He reiterated that there were serious allegations of fraud against the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants and the 4th Defendants title can be impeached with evidence of fraud.

He agreed that the Plaintiffs interest was only in the portion they bought but the subdivision process was never completed and the injunction sought was only to protect that portion.

I have considered the Affidavit evidence as well as Counsels' submissions whom I thank for their spirited arguments and citation of the relevant law. I have also taken Judicial Notice of the record in **Cause No. 2012/HP/0576** and in particular my learned sister, **Kabuka J's** Ruling on the Injunction granted to the 5<sup>th</sup> and 6<sup>th</sup> Defendants therein, who are now the 1st and 2<sup>nd</sup> Plaintiff in this matter.

There are certain pre-conditions that must be satisfied before the grant of an injunction. The pre-conditions set out in the case of **American Cyanamid v Ethicon**<sup>7</sup> were stamped with a seal of approval by Zambian Courts in the landmark cases of, *inter alia*, **Shell BP Zambia Limited v Conidaris and Another**<sup>8</sup> and **Turnkey Properties v Lusaka West Development Company Limited, BSK Chiti and Zambia State Insurance Corporation Ltd**<sup>9</sup>.

The case of **Shell & B.P. Zambia Limited v Conidaris and Another**, the Supreme Court had occasion to opine as follows;

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<sup>6</sup> Ibid 5

<sup>7</sup> *American Cyanamid v Ethicon (1975) AC 396*

<sup>8</sup> *Shell And BP Zambia Limited v Conidaris and Others (1974) Z.R. 281 (H.C.)*

<sup>9</sup> *Turnkey Properties v Lusaka West Development Company Ltd., B.S.K. Chiti (Sued As Receiver) and Zambia State Insurance Corporation Ltd. (1984) Z.R. 85 (S.C.)*

*“A court will not generally grant an injunction unless the right to a 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 not injury which cannot possibly be repaired.”*

The requirement to establish a clear right to relief must be complimented by an applicant for an injunction convincing the court that the case has good prospects of succeeding at trial. Chirwa J, as he then was, explained this in the case of **Ndove (Harton) v National Education Company**<sup>10</sup>, in which he said that it was necessary for a person applying for an interlocutory injunction to not only show that triable issues had been raised but also that there were good prospects of succeeding at the main hearing.

The position therefore, is that even though in an application for an injunction the object is not to argue the main matter, the Court is entitled to take a snapshot of the facts presented to it and determine whether on the facts before it there is a possibility that the applicant is entitled to relief or that he has good prospects of succeeding at the main trial.

In *casu*, the Plaintiffs have shown that they purchased a subdivision from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants before any of the other Defendants transacted over the property. My learned sister **Kabuka J** in granting an injunction under **Cause No. 2012/HP/0576** found that the Plaintiffs herein had a valid interest in the subdivision of the property measuring about 74 x 43.5 on which stood a warehouse and office block. She found that the Plaintiff being a contracting purchaser did have a clear right to relief.

The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants have submitted that they conducted the required due diligence and only proceeded to transact after they established that there were no encumbrances or interests registered against the property. This means that the Plaintiffs failed to protect their interests by not filing a caveat in as provided by **Section 76** of the **Lands and Deeds Registry**

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<sup>10</sup> *Ndove (Harton) v National Education Company (1980) ZR*

**Act**<sup>11</sup>. I am however guided by the case of **Mwenya v. Kapinga**<sup>12</sup> where the Supreme Court held that a purchaser who purchases property was subject to a tenant's title or rights an issue which shall be resolved at trial.

I agree with my learned sister **Kabuka J** and find that the Plaintiffs have established a clear right to relief. Both the 1<sup>st</sup> Plaintiff and 4<sup>th</sup> Defendant claim to have purchased the property from the 1<sup>st</sup> Defendant in 1997 and 2010 respectively. Other than merely submitting that they have no objection to this application, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have been nonchalant. In view of this attitude and in view of the allegations of fraud raised against the 4<sup>th</sup> and 5<sup>th</sup> Defendants I would say that the Plaintiffs met the test set out in **Ndove (Harton) v National Education Company**<sup>13</sup>,

In the **American Cyanamid Case**<sup>14</sup>, *Lord Diplock* said that injunctions should not be easily granted and he stressed that an applicant must show that he shall suffer irreparable damage if the injunction is not granted and that this principle should not be taken lightly. This was reiterated in **Shell & B.P. Zambia Limited v Conidaris and Another**<sup>15</sup>.

The fact that the Plaintiffs are tenants conducting business on the property has not been disputed by any of the Defendants. This brings to mind the case of **Garden Cottage Foods Ltd v Milk Marketing Board**<sup>16</sup> where Lord Wilberforce cited the judgment of Kay LJ in **J Lyons & Sons v Wilkins**<sup>17</sup>, as follows;

*'... in all these cases of interlocutory injunctions where a man's trade is affected one sees the enormous importance that there may be in interfering at once before the action can be brought on for trial; because during the interval, which may be long or short ... a man's trade might be absolutely destroyed or ruined by a course of proceedings which ... may be determined to be utterly illegal; and yet nothing can compensate the man for the utter loss of his business by what has been done in that interval.'*

<sup>11</sup>Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia

<sup>12</sup>Mwenya and Randee v Kapinga (1998) S.J. 12 (S.C.)

<sup>13</sup>Ndove (Harton) v National Education Company (1980) ZR

<sup>14</sup>Ibid 7

<sup>15</sup>Shell & B.P. Zambia Limited v Conidaris and Another (1975) Z.R. 174 (S.C.)

<sup>16</sup>Garden Cottage Foods Ltd v Milk Marketing Board (1983) 2 All ER 770 Page 783

<sup>17</sup>Lyons & Sons v Wilkins [1896] 1 Ch 811 at 827,

In the already cited case of **Mwenya & Randee v Kapinga**<sup>18</sup> the court reinforced Chitty on Contracts by using the same words, thus;

*“The law takes the view that damages cannot adequately compensate a party for breach of a contract for the sale of an interest in a particular piece of land or of a particular house (however ordinary) .....”*

The next principle that requires consideration relates to the balance of convenience which should be considered where the adequacy of damages appears evenly balanced or will affect Parties other than the applicant. Lord Diplock<sup>19</sup> said

*“Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo”*

In this particular instance the Plaintiffs are in occupation of the premises, and have been conducting business there from at least 1997. The other Parties all stand to suffer injury in one way or another, even irreparable injury, but they all became involved with the property much later than the Plaintiffs.

It must be said that the balance of convenience favours the Plaintiffs because if the *status quo* is upset the Plaintiffs are likely to be evicted from the property. Further, should the 5<sup>th</sup> Defendant fail to satisfy the mortgage over the property, the 6<sup>th</sup> Defendant is likely to execute its rights over the mortgage and probably sell the property and thereby introduce another potential defendant into the fray.

Finally, learned Counsel for the 6<sup>th</sup> Defendant argued and learned counsel for the Plaintiffs agreed, that Plaintiffs are only interested in the subdivision they claim to have bought. The order of interim injunction granted to the Plaintiff was with regard to Stand No. LUS/8502, Lusaka and that is the subject of this inters partes hearing. Should the Defendants reach a meeting of the minds on this issue, they are at liberty to file consent to that effect.

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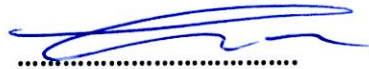
<sup>18</sup> *Mwenya & Randee v Kapinga (1988) ZR 1*

<sup>19</sup> *American Cyanamid v Ethicon (1975) AC 396, 408F*

However, having found that there are serious issues to be tried with a clear right to relief; that the Plaintiffs have good prospects of succeeding on the claim; that the Plaintiffs may suffer irreparable damage and that the balance of convenience favours the Plaintiffs, it is in the interest of justice that the *status quo* be preserved. In the premises, the Interim injunction of 25<sup>th</sup> August, 2015 is hereby confirmed.

On account of the nature of this case the costs of this application shall be in the cause.

**Dated this 18<sup>th</sup> day of January, 2016**



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**M.M. KONDOLO, SC**

**JUDGE**