

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

2017/HP/0839

BETWEEN:

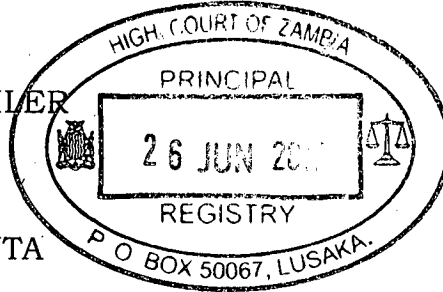
JOSEPH NIKLAUS HUWILER

PLAINTIFF

AND

CHARLOTTE MUKUMBUTA

DEFENDANT



**BEFORE THE HONOURABLE LADY JUSTICE M. CHANDA THIS 26TH
DAY OF JUNE, 2017**

APPEARANCES:

For the Plaintiff : Mr P.G Katupisha of Messrs Milner & Paul
Legal Practitioners

For the Defendant : Mr L.E Eyaa of Messrs KBF & Partners

R U L I N G

LEGISLATION REFERRED TO:

1. *Order 29 Rule 1 of the White Book*
2. *Order III Rule 2 of the High Court Rules Chapter 27 of the Laws of Zambia*

On 24th May, 2017 the plaintiff filed a summons for an interim injunction pursuant to *Order 29 Rule 1 of the White Book*. The summons was supported by an affidavit. The defendant filed her affidavit in opposition on 14th June, 2017. The matter came up

for an *inter parte* hearing on 26th June, 2017 and both parties gave *viva voce* submissions to buttress their respective positions.

The plaintiff's application was mainly premised on the ground that during the period of his cohabitation with the defendant, she persistently exhibited very violent and unruly behaviour towards him. The plaintiff exhibited a medical report marked as "**JNHI**" to that effect. The plaintiff sought the indulgence of the Court to restrain the defendant from entering into the plaintiff's dwelling premises at plot 2330 and working premises known as Pilatus Engineering located at Plot 2319.

In opposing the plaintiff's application for an interim injunction, the defendant relied on her affidavit in opposition filed into Court on 14th June, 2017. The defendant submitted that the injunction be discharged in line with *Order 29/1A/24 of the White Book* for failure by the plaintiff to make full and frank disclosure which was one of the prerequisites for grant of an ex-parte injunction. The defendant submitted that contrary to the assertion that she had been cohabiting with the plaintiff, she was legally married to him in 2012 under customary law. In support of her assertion the defendant produced exhibits marked "**CM1 to CM20**". The defendant further contended that the injunction prevented her and the child of the family from entering the matrimonial home and rendered them destitute. In the alternative the defendant submitted that should the Court find it fit to sustain the injunction, the plaintiff should be ordered to avail alternative

accommodation, transport and medical facilities for the defendant and the child of the family.

In reply the defendant urged the Court to confirm the injunction as allowing the parties to continue staying together simply because they were husband and wife would perpetuate the violence complained of.

I have given careful consideration to the arguments advanced by both parties and it is my immediate affirmation that the relationship that exists between them is much more than that of cohabitation. I am satisfied from the documents exhibited by the defendant in her affidavit in opposition that the parties herein have lived together as husband and wife.

I also note that there is a civil suit involving the parties herein pending before the Local Court for reconciliation of their matrimonial differences that have arisen over time, at the instance of the defendant. It is apparent from the evidence adduced on the record that the issues that have been brought before me for adjudication have a bearing on the matrimonial disputes that have been taken to the Local Court for determination. It is my observation that the issues that the plaintiff seeks to be addressed by way of an interim injunction can competently be resolved by the Local Court as they are premised on the parties alleged customary marriage. In view of the foregoing this Court is constrained to confirm the *ex-parte* order for an interim injunction in its current form. This Court

has however, considered it necessary in line with *Order III Rule 2 of the High Court Rules* to make an interlocutory order for the personal protection of the parties herein pending the resolution of their matrimonial dispute before the Local Court as follows:-

- (i) The plaintiff shall with immediate effect pay for hotel accommodation, transport, medical facilities and other upkeep expenses for the defendant and the child of the family.
- (ii) The plaintiff is further given one month within which to avail decent alternative accommodation to the defendant and the child, and to continue providing for their daily needs.
- (iii) The parties are also warned not to engage in any violent conduct or acts that are inimical to the other's well-being.

I order accordingly.

Dated at Lusaka this 26th day of *June*, 2017.



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M. CHANDA
JUDGE