

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

**2017/HP/1139**



BETWEEN:

**JASIEL PHIRI**

**PLAINTIFF**

AND

**FREDRICK WILLIAM SINKAMBA**

**1<sup>st</sup> DEFENDANT**

**THE ATTORNEY GENERAL**

**2<sup>nd</sup> DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 10<sup>th</sup> DAY OF  
OCTOBER, 2017**

*For the Plaintiff : Mr B.C. Mutale, BCM Legal Practitioners*

*For the 1<sup>st</sup> Defendant : In person*

*For the 2<sup>nd</sup> Defendant : Mr Daniel Ngwira, State Advocate*

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## **R U L I N G**

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CASES REFERRED TO:

- 1. American Cyanamid CO V Ethicon Limited 1975 1 ALL ER 504**

LEGISLATION REFERRED TO:

- 1. The High Court Rules, Chapter 27 of the Laws of Zambia**

This is a ruling on an application made by the Plaintiff for an order of interim injunction, made pursuant to Order 27 Rule 4 of the High Court Rules, Chapter 27 of the Laws of Zambia. Counsel relied on the affidavit filed in support of the application, and stated that the Plaintiff holds title

to Stand No 1809, Chelstone, and that exhibit 'JP2' to the affidavit in support of the application is the diagram showing the extent of the Plaintiff's property.

Counsel went on to submit that there are principles governing whether an injunction should be granted, with the first being whether there is a serious issue to be tried? That the Plaintiff had exhibited a certificate of title showing the full extent of the property claimed, and that they had perused the affidavit filed in opposition to the application, which has exhibited a certificate of title as well. However it had been noted that the property numbers are different, and that this raises a serious issue to be tried.

It was Counsel's submission that the next principle to be considered is where the balance of convenience lies. That as the Plaintiff has a certificate of title for the land claimed, being Stand No 1809 Chelstone, the balance of convenience lies with regard to the holder of a certificate of title to the said piece of land.

That the 3<sup>rd</sup> issue is whether damages would be an adequate remedy. Counsel's argument was that damages would not be an adequate remedy if the Plaintiff were to lose the land, as the court has in a number of cases pronounced itself that in matters involving land, an injunction should lie, pending the determination of the rights of the parties. That therefore this is a proper case where an injunction should be granted.

In response, the 1<sup>st</sup> Defendant opposed the application, and relied on the affidavit in opposition. He stated that they had demonstrated ownership of the property through the documents exhibited to the affidavit in opposition. The 1<sup>st</sup> Defendant also argued that the application for the



injunction is misplaced as exhibit 'FW8' to the affidavit in opposition shows that the 1<sup>st</sup> Defendant was allocated the land on 24<sup>th</sup> June, 2015 and obtained title to the property on 11<sup>th</sup> November, 2016, while the Plaintiff was only offered the land on 9<sup>th</sup> May, 2017.

The 2<sup>nd</sup> Defendant had nothing to submit, stating that an injunction cannot lie against the State.

Counsel's submission in reply was that the argument regarding the Plaintiff being offered land that was already on title, is a matter to be determined at trial, but noted that the extent of the 1<sup>st</sup> Defendant's land is 1, 947 square metres, while that for the Plaintiff is 3, 387 square metres in extent. Counsel prayed that the status quo be maintained until the matter is determined.

I have considered the application. Order 27 of the High Court Rules, Chapter 27 of the Laws of Zambia provides that;

***"1. In any suit in which it shall be shown, to the satisfaction of the Court or a Judge, that any property which is in dispute in the suit is in danger of being wasted, damaged or alienated by any party to the suit, it shall be lawful for the Court or a Judge to issue an injunction to such party, commanding him to refrain from doing the particular act complained of, or to give such order, for the purpose of staying and preventing him from wasting, damaging or alienating the property, as to the Court or a Judge may seem meet, and, in all cases in which it may appear to the Court or a Judge to be necessary for the preservation or the better management or custody of any property which is in dispute in a suit, it shall be lawful***



***for the Court or a Judge to appoint a receiver or manager of such property, and, if need be, to remove the person in whose possession or custody the property may be from the possession or custody thereof, and to commit the same to the custody of such receiver or manager, and to grant to such receiver or manager all such powers for the management or the preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as to the Court or a Judge may seem proper”.***

In this case the Plaintiff seeks to restrain the 1<sup>st</sup> Defendant whether by himself, his agents, servants or whomsoever from carrying on any activities on the property known as Stand No 1809 Chelston, and from harassing, threatening or interfering with the Plaintiff's quiet enjoyment of the property. The Plaintiff in the affidavit in support of the application avers that he was offered Stand No 1809 Chelston on 9<sup>th</sup> May, 2017, and he acquired a certificate of title for the said property.

That the Defendant has encroached on the property, and has put a property on the land, without the Plaintiff's consent, as shown on exhibit 'JP3' to the affidavit in support of the application.

In the affidavit filed in opposition to the application, the 1<sup>st</sup> Defendant states that Celebrate Church International Registered Trustees of which he is a pastor was allocated the land, and was issued the certificate of title to the property on 1<sup>st</sup> August, 2015. That the Plaintiff was only allocated the land on 9<sup>th</sup> May, 2017, and acquired title to the property on 22<sup>nd</sup> June, 2017. Therefore the claim to the ownership of the land is misplaced.



As rightly submitted by Counsel for the Plaintiff, there are principles governing the grant of injunctions. These principles were laid down in the case of **AMERICAN CYANAMID CO V ETHICON LIMITED 1975 1 ALL ER 504** as;

1. *Is there a serious issue to be tried?*

*If the answer to that question is yes;*

2. *Would damages be an adequate remedy for the injured party if the injunction is or is not granted?*

3. *If not where does the balance of convenience lie?*

Therefore the first question is whether there is a serious issue to be tried? As can be seen from the submissions, there is a serious issue to be tried as both the Plaintiff and the 1<sup>st</sup> Defendant have exhibited title to the land that they claim, but which is differently numbered. This is a matter that needs to be tried, and therefore the first requirement has been met.

The next question to be considered is whether damages would be an adequate remedy. Counsel for the Plaintiff argued that courts have held that damages are not an adequate remedy for loss of land. I do agree with this principle and on that basis the injunction should be granted. In this case there is need to ascertain the rights of the parties with regard to the ownership of the land, and this brings me to the balance of convenience. It is noteworthy that the 1<sup>st</sup> Defendants church was first allocated the land in 2015, and the Plaintiff was only given the land on 9<sup>th</sup> May, 2017. The 1<sup>st</sup> Defendant deposes in the affidavit in opposition that the church has put up structures on the land, and if restrained the church members will not benefit from the structures. A perusal of exhibit 'FWS9' to the affidavit in opposition shows that there are incomplete

structures on the property in dispute. It has not been established when these structures were put up.

I do note that while each party holds a certificate of title to the property, the extent of land that each holds varies, and this a matter that shall be settled at trial. In order to ensure a proper determination of the rights of the parties, I order that no further construction shall take place on the property by the Plaintiff or the 1<sup>st</sup> Defendant, and neither of them shall any party dispose of the property, until the matter is determined. The 2<sup>nd</sup> Defendant is directed to enter its appearance and file the defence within 14 days from today. Costs shall be in the cause. Leave to appeal is granted.

**DATED THE 10<sup>th</sup> DAY OF OCTOBER, 2017**

*S. Kaunda*

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**S. KAUNDA NEWA  
HIGH COURT JUDGE**