

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

2017/HP/0979

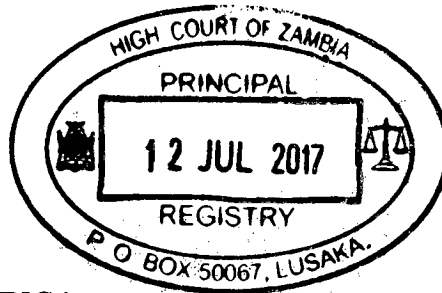
(Civil Jurisdiction)

BETWEEN :

MIRIAM CHIVASA

AND

INTERNATIONAL GAMING AFRICA



PLAINTIFF

DEFENDANT

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the
12th day of July, 2017**

For the Plaintiff : In Person
For the Defendant: No Appearance

R U L I N G

Case Authorities Referred To:

1. *Shell & BP v Conidaris (1975) Z.R 174*
2. *American Cynamid Co. v Ethicon Limited (1975) A.C 316*

Legislation Referred To:

1. *High Court Act, Chapter 27*

This is the Plaintiff's application for an Order of Interim Injunction filed pursuant to Order 27 Rule 1 of the High Court Rules. It is supported by an Affidavit. By this application, the

Plaintiff seeks to restrain the Defendant from evicting her from House No. 2, Mwajo Villa, Zambezi Road, Roma Township, Lusaka.

In the Affidavit, the Plaintiff, **Miriam Chivasa** deposes that by a contract of employment dated 5th November, 2012, she was offered employment as an Inspector in the Defendant Company as shown in the exhibit marked **“MC1.”** That by a letter dated 15th October, 2016, the Defendant warned her of the alleged misconduct as shown in the exhibit marked **“MC2.”** Further, by a letter dated 16th October, 2016, she exonerated herself from the alleged misconduct.

The deponent avers that on 30th May, 2017, the Defendant issued her with notification of suspension from employment, pending a disciplinary inquiry. That a further notification of disciplinary inquiry dated 1st June, 2016 followed wherein she was charged with the offence of ***“behavior which was not in the best interest of the Company on Company premises, contrary to clause 12 of the Defendant’s Code of Conduct,”*** as shown in the exhibits marked **“MC5”** and **“MC6.”**

The deponent avers that on 6th June, 2017, she was dismissed from employment but granted a right to appeal, which she pursued on 12th June, 2017. By this application, the deponent seeks to maintain the status quo of employee pending the determination of this action. She contends that the Defendant's demand of the company property in her possession, including the company house are contrary to the Collective Agreement and Code of Conduct.

I have seriously considered the Affidavit filed in support of the application. The principles a Court must consider when dealing with injunctive relief are stated in cases such as **Shell & BP v Conidaris**¹ and **American Cynamid**². In the case of **BP & Shell v Conidaris**¹, the Supreme Court guided that a person seeking injunctive relief must demonstrate the following:

- a) *A clear right to relief*
- b) *Irreparable damage and injury that cannot be atoned for by damages*
- c) *A tilt of the balance of convenience in the Plaintiff's favour*

I am therefore obliged to firstly consider whether on the available evidence, there is a serious question to be tried and if the Plaintiff is entitled to relief. Upon consideration of the facts, I find

that the deponent does not want to surrender company assets affronting the reality of her dismissal.

In the circumstances, this Court cannot grant an injunction to deprive the Defendant of its property. This is against the principles of injunctive relief. In the result, the deponent must surrender all the company property including the house to its rightful owner.

I wish to convent on the Plaintiff's reliefs in the main action which are couched as follows:

- (i) An order that the Intended demand by the Plaintiff for her to hand over company property and vacate the company house is illegal, null and void as it contravenes the Collective Agreement to the extent that the same can only be effected after the determination of the Appeal.**
- (ii) An injunction restraining the Defendants from repossessing Company property from the Plaintiff and / or evicting her from the Company house pending determination of the appeal and /or these proceedings.**
- (iii) Damages**
- (iv) Costs**
- (v) Any other reliefs the Court may deem fit.**

I find that these reliefs are not happily pleaded and all hinge on injunctive relief. Since I have declined to grant an injunction the rest of the Plaintiff's claims have no merit and are hereby dismissed. I make no order as to costs.

R5

Leave to appeal is granted.

Dated this 12th day of July, 2017.

M. Mapani

M. Mapani-Kawimbe
HIGH COURT JUDGE