

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

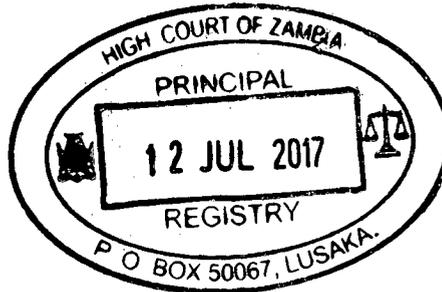
2017/HP/1036

B E T W E E N :

DANSTAN SIAME

AND

CHARENE TROLLIP



PLAINTIFF

DEFENDANT

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

For the Plaintiff:

In Person

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 ex-parte application for an Order of Interim Injunction made pursuant to Order 29 Rule 1 of the Rules

of the Supreme Court. It is supported by an Affidavit. By this application, the Plaintiff seeks to restrain the Defendant from disturbing the Plaintiff from his daily operations on farm No. 17438, Konga Road, Makeni or selling the Plaintiff's chickens which are on the property.

In the Affidavit, the Plaintiff, **Danstan Siame** deposes that the Plaintiff rented the Defendant's farm at a monthly rental of K15,000. That the Plaintiff was to occupy the farm after the Defendant removed the cages from the chicken runs. The deponent avers that he removed the cages on 15th February, 2017, after the Defendant failed to do so. The deponent also avers that he renovated, fumigated, disinfected and electrified all the chicken runs so that he could rear broilers.

The deponent states that the he carried out the renovations on the understanding that he would use the farm for a period of one year rent free. He also states that the parties never executed a formal rental agreement which remains in draft form as shown in the exhibit marked "**DS1.**"

The deponent avers that on 17th February, 2017, he paid the Defendant K15,000 in rentals. However, on 12th April, 2017, the Defendant in the company of police officers attempted to evict him from the property. The matter was amicably resolved. That the Defendant later served him an eviction notice, which gave him a period of three months to vacate the property as shown in exhibit marked "**DS3.**"

The deponent avers that on 13th June, 2017 at about 20.00 hours as he was about to deliver 8,757 chickens loaded in three trucks to his clients; the Defendant illegally and arbitrary blocked the trucks from leaving the property and demanded to be paid K30,000 for rent. That some of the chickens died due to lack of food and water during the detention and the Defendant consequently lost out on business.

The deponent concludes with a prayer to the Court urging it to grant him an interim injunction to restrain the Defendant either by herself, agents, servants or whoever from harassing, or disturbing his daily operations on the farm.

I have anxiously considered the affidavit filed in support of the application. The principles a Court must consider when dealing with injunctive relief are stated in cases like **Shell & BP v Conidaris**¹ and **American Cynamid**². The guidance given by the Supreme Court in the case of **Shell & BP v Conidaris**¹, is 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.*

Thus, the first issue I must consider is 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 am of the view that there is a question to be tried and it is whether the Plaintiff is entitled to damages claimed as a result of a failed tenancy arrangement. This can only be determined at trial and not at this interlocutory stage.

I have paid the closest attention to the Plaintiff's Affidavit in Support, from which I gather that most of his claims are monetary.

In my view, they can be adequately compensated by an award of damages should he be successful at trial.

Accordingly, I refuse to grant the Plaintiff an interim injunction for the reasons stated above. The application is dismissed. I make no order as to costs.

Leave to appeal is granted.

Dated this 12th day of July, 2017.



M. Mapani-Kawimbe
HIGH COURT JUDGE