

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

2017/HP/1560

**BETWEEN :**

LOYD SALIMBOSHI

PLAINTIFF**AND**

CATHERINE MWEWA

DEFENDANT

**Before Honorable Mrs. Justice M. Mapani-Kawimbe on the 7th day of
November, 2017**

For the Plaintiff : *In Person*
For the Defendant : *Mrs. I. Kunda, Messrs George Kunda & Co.*

R U L I N G

Cases Referred To:

1. *Shell and BP (Z) Limited v Conidaris & Others* (1975) Z.R 17
2. *Turnkey Properties Ltd v Lusaka West Development Co. Ltd and Others* (1984) ZR. 85
3. *American Cynamid Co. v Ethicon* (1975) AC 396
4. *Harton Ndovu v Zambia Education Company (Z) Ltd.* (1980) Z.R 184

Legislation Referred To:

1. *High Court Rules, Chapter 27*

By this application, the Plaintiff seeks an interim injunction pursuant to Order 27 Rule 1 of the High Court Rules. It is supported by an Affidavit.

The Affidavit discloses that the deponent **Loyd Salimboshi** is the owner of Plot No. 29167, Marble village Complex registered under Ministry of Lands as No. Sub "U" of N1 of Farm No. 1938, Lusaka as shown in the exhibit marked "**LS1**." That he purchased and took vacant possession of the property on 12th November, 2012 from C.K. Marble Limited, who were the vendors. He states that he is in the process of obtaining title.

The deponent further states that on 20th June, 2013, the Defendant accompanied by Mr. Munkombwe asked him to surrender a portion of his plot to facilitate her backyard but he declined. He also states that in July, 2013, the Defendant's agent Mr. Chilufya, PF Branch Chairperson together with twenty PF cadres and the Defendant's sons forcefully marked off 5 x 25 metres from his property and built a concrete boundary wall. That the Defendant extended her plot to 27 x 40 metres from her original 25 x 25 metres, which she purchased from Mr. Lawrence Mulenga a squatter in the Government buffer zone as shown in the exhibit marked "**LS2**."

The deponent avers that on 17th September, 2013 C.K. Marble informed the Defendant to vacate the 5 x 25 metres, which is located in the Government buffer zone as shown in the exhibit marked "**LS3.**" That since 11th May, 2017, the Defendant has engaged PF party cadres, her two sons and has delivered three police summons on him, which were dismissed by the Officer-In-Charge at Plainview Police Post as shown in the exhibit marked "**LS4.**"

The deponent states that on 24th July, 2017, he chiseled out blocks from the concrete wall to open vehicle passage to his property. That on 20th August, 2017, the Defendant and her two sons forcefully and violently entered his property and arrested his caretaker who was charged with malicious damage. That the charge was later withdrawn.

The deponent avers that the Defendant's sons have re-erected the concrete boundary wall blocking him access to his property. He prays to the Court to grant him an order of interim injunction restraining the Defendant either by herself, agents, servants or whomsoever from insulting him, trespassing on his property,

erecting the boundary fence or demolishing anything on his property.

Catherine Mwewa filed an Affidavit in Opposition where she states that she purchased the property in dispute from Lawrence Sunday Mulenga who originally acquired it from C.K. Marble Limited as shown in the exhibit marked "**CM1**" and "**CM2**." That the vendor C.K. Marble issued a letter of sale on 7th March, 2013 and the property subsequently changed ownership as shown in the exhibits marked "**CM3**" and "**CM4**."

The deponent states that in 2013, the Plaintiff begun to claim that the concrete wall built on her property had encroached his land and demanded it to be demolished. That because of this misunderstanding, the Defendant called her neighbour, the Chairlady of New Garden House and C.K. Marble to resolve the dispute. That the advice of the vendors was that she should erect a boundary wall to avoid conflict with the Plaintiff vide a letter dated 17th September, 2013. That she was also directed in that letter to vacate the 5 metres, which she allegedly encroached on as shown in the exhibit marked "**CM6**."

The deponent also states that after she erected the wall fence there was peace till 13th April, 2017, when the Plaintiff asked the Defendant's son to pull down the wall fence. That after a few months, the Plaintiff broke her wall with his agents and she reported the matter to the police. She avers that the Plaintiff approached the vendors and accused them of being corrupt and failing to resolve the dispute. Later, that summons were served on the Defendant who refused to accept them.

The deponent states that she has suffered monetary losses because of having to rebuild the wall, which the Plaintiff keeps destroying. She prays to the Court to help her protect her property.

At the hearing, both parties placed reliance on the Affidavits filed herein. Learned Counsel for the Defendant submitted that the dispute involved the five metres of land, which the Plaintiff alleged had been encroached on by the Defendant. Counsel referred me to the case of **Shell and BP Zambia Limited v Conidaris¹ and Turnkey Properties Limited v Lusaka West Development Co. Ltd. and Others² and American Cynamid³**, which elucidate the principles of injunctive relief.

In peculiar circumstances, the Plaintiff filed an application of ex-parte summons for leave to reply when he could have easily filed an Affidavit without leave of Court. However, I take the view that I am able to deal with the application on the basis of the material on record.

I have anxiously considered the affidavits filed herein and the submissions of Learned Counsel for the Defendant. The principles a Court must address itself to in determining an application for injunctive relief are authoritatively stated in cases such as **American Cyanamid v Ethicon Ltd³**, where a Court is indulged to consider the following:

- “i. Whether there is a serious question to be tried in the matter herein.**
- ii. Whether on the facts there is a probability that the Plaintiff is entitled to relief.**
- iii. Whether an interlocutory injunction is necessary to maintain the status quo and to protect the Plaintiff from irreparable injury.”**

The Court is not called upon to decide finally on the rights of the parties but is merely required to satisfy itself that there is a serious question to be tried at the hearing and that on the facts presented, there is probability that the Plaintiff is entitled to relief

according to the case of **Harton Ndovu v Zambia Education Company⁴**.

In **Turnkey Properties Ltd v Lusaka West Development Co. Ltd and Others²**, the Supreme Court held that:

“an injunction is appropriate for the presentation of restoration of a particular situation pending trial. Accordingly, that it will be in the interest of justice that the status quo is maintained until final determination of dispute.”

I find that the lengthy affidavit filed herein *ipso facto* illustrate that there is a serious question to be tried and it is over the ownership of the disputed land. The Plaintiff alleges that he has been fenced off his property and has no access. On the other hand, the Defendant avers that she is the owner of the disputed property. There are several other counter allegations made by the parties that can only be determined at a full trial. The status quo on the date of hearing the application was that the boundary wall was partially demolished and the Plaintiff had access to his property.

The Defendant conceded that the boundary wall was partially demolished by the Plaintiff and his agents. It is trite law that damages cannot adequately compensate a party for their interest in

a particular piece of land or a particular house, however ordinary. I therefore, find it necessary to maintain the status quo until the matter is finally determined on the merits.

I am naturally inclined to the view that the balance of convenience tilts in favour of the Plaintiff who has shown that he has no other access to his property. I will therefore grant the Plaintiff an order of interim injunction to maintain the status quo pending determination of the matter.

I award costs to the Plaintiff to be taxed in default of agreement.

Dated this 7th day of November, 2017.


M. Mapani-Kawimbe
HIGH COURT JUDGE