

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

**2018/HP/0348**



**B E T W E E N :**

TIAM LIMITED

**PLAINTIFF**

**AND**

ZAMBIA TELECOMMUNICATIONS COMPANY LIMITED

**DEFENDANT**

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the  
26<sup>th</sup> day of March, 2018**

*For the Plaintiff* : *Mr. Mr. B. C. Mutale & Mr. E Banda, BCM Legal Practitioners*  
*For the Defendant* : *Mrs. C. Chakalika, In-House Counsel*

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**R U L I N G**

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**Cases Referred To:**

- 1. American Cyanamid Co. v Ethicon (1975) AC 396*
- 2. Shell and BP (Z) Limited v Conidaris & Others (1974) 281*

**Legislation Referred To:**

- 1. High Court Rules, Chapter 27*

By this application, the Plaintiff seeks an interim injunction pursuant to Order 27 Rule 4 of the High Court Rules. It is supported by an Affidavit.

The Affidavit sworn by **Mwansa Kapumpe** discloses that on 6<sup>th</sup> September, 2016, the Plaintiff Company and the Defendant executed a Distributor Agreement. That the Plaintiff agreed to sell and distribute the Defendant's products and services for a commission from the sales. That to secure the Distributor Agreement, the Plaintiff was required to provide an Advance Payment Guarantee, which it obtained from Goldman Insurance Limited for the sum of K250,000.

The Affidavit further discloses that on 20<sup>th</sup> December, 2017, the Defendant unilaterally made changes to the Distributor Agreement as shown in the exhibits marked "**MK1**" and "**MK2**". That the changes affected the inflow of the Plaintiff's income and it has been unable to timely remit money to the Defendant. In consequence, that the Defendant called the Plaintiff's guarantor to recover the sum of K269,994.62 due to it.

It is averred that if the Defendant is not prevented from demanding payment from the Plaintiff or its guarantor (Goldman Insurance Limited) the Plaintiff will suffer irreparable damage. The

deponent prays for an order of an interim injunction to restrain the Defendant until the matter is determined by Court.

The Acting Chief Finance Officer of the Defendant Company, **Ismail Dore** swore an Affidavit in Opposition. He concedes that the parties executed a Distributor Agreement where the Plaintiff was allowed to deal in the Defendant's products. That the Plaintiff bought stock at a discounted price since it could not pay upfront, the Defendant asked for an advance payment guarantee.

The deponent states that the Plaintiff's debt of K269,994.62 fell due in November, 2017 as shown in the exhibit "**MK2**." That in its Memorandum dated 20<sup>th</sup> September, 2017, exhibited in "**MK1**", the Defendant informed the Plaintiff that new changes to the Distributor Agreement would take effect on 1<sup>st</sup> February, 2018. It is deposed to that there is no connection between the Plaintiff's failure to settle its debt and the changes in commission structure.

The deponent also states that the Plaintiff admitted that it owes the Defendant K269,994.62 vide a letter dated 27<sup>th</sup> December, 2017. Further, that it made a commitment to settle the debt as

shown in the exhibit marked “**ID1.**” That on 24<sup>th</sup> January, 2018, the Plaintiff reiterated its commitment towards settling the debt as shown in the exhibit marked “**ID2a-b**”.

The deponent avers that the dispute between the parties is monetary and the Plaintiff will not suffer irreparable injury if the ex parte order of interim injunction granted on 23<sup>rd</sup> February, 2018 is discharged.

Learned Counsel for the Plaintiff filed Skeleton Arguments. He submitted that the Court has power to grant injunctive relief according to the cases of **American Cynamid Company v Ethicon**<sup>1</sup> and **Shell and BP Zambia Limited v Conidaris and Others**<sup>2</sup>. Counsel further submitted that in the **Shell and BP**<sup>2</sup> the Supreme Court stated that:

**“....all the Court needs to do at the interlocutory stage is to be satisfied that there is a serious question to be tried at the hearing and that the Court ought to interfere without waiting for the right to be finally established at trial....”**

Further in that case, the Supreme Court *inter alia* held that:

**“A Court will not generally grant an interlocutory injunction unless the right to relief is clear and unless the injunction is necessary to protect the Plaintiff from the irreparable injury, mere inconvenience is not enough”**



Counsel contended that the Plaintiff had demonstrated a good and arguable case and had acquired the following rights under the contract of sale; namely:

- (i) *The right of ownership*
- (ii) *Right of possession or occupation.*
- (iii) *Inchoate interest.*

Counsel stated that the Plaintiff Company is engaged in various businesses and it requires a consistent cash flow to operate. If the Defendant is allowed to recover from the Plaintiff's guarantor, it will suffer irreparable damage.

I have anxiously considered the Affidavits and the Skeleton Arguments filed herein. The issue that falls for determination is whether I can confirm the *ex parte* order of interim injunction granted to the Plaintiff on 23<sup>rd</sup> February, 2017 pending determination of the main cause.

In the case of **Shell and BP Zambia Limited v Conidaris and Others<sup>2</sup>**, the Supreme Court stated 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.*

The Plaintiff contended that the Defendant breached the Distributor Agreement by effecting unilateral changes, which made it difficult for the Plaintiff to pay its debt. It however, conceded that it owes the Defendant money. On the other hand, the Defendant stated that the Plaintiff conceded its debt and made an undertaking to settle the money owed.

It occurs to me that the Plaintiff does not dispute that it owes the Defendant money. It has also committed to repay the debt. Changes were made to the Distributor Agreement but it was after the debt was contracted. In other words, I find that the dispute between the parties is defined. If the Plaintiff were to succeed at trial, given that this is a monetary claim, an award of damages would be adequate. I cannot grant an interim injunction to forestall the payment of a debt by the Plaintiff, which it has admitted. In my view, the balance of convenience therefore, lies with the Defendant to recover the money owed to it.

**R7**

I therefore, discharge the *ex parte* order of interim injunction granted to the Plaintiff on 7<sup>th</sup> March, 2018. I award costs to the Defendant to be taxed in default of agreement.

Dated this 26<sup>th</sup> day of March, 2018.

*M. Mapani*  
M. Mapani-Kagwimbe  
**HIGH COURT JUDGE**