

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

2020/HP/0127

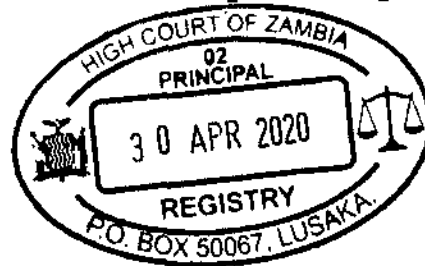
BETWEEN:

**BISHOP PAULES YOWAKIM
(Suing in his capacity as Trustee of Coptic Hospital)**

PLAINTIFF

AND

**DR. MICHAEL MAGDY
DR. MARIAN FAYEZ**



**1ST DEFENDANT
2ND DEFENDANT**

Before: The Hon. Mr. Justice W.G.K. Muma

For the Plaintiffs: *Mr. G. Tembo from Messrs. James & Dorothy Legal Practitioners*

For the Defendant: *Mr. R. Chafwakala and Mr. M. Kabisa from Messrs. Silweya and Company*

RULING

Case referred to:

- 1. Shell BP Zambia Limited v Conidaris and Others (1975) Z.R. 174;***
- 2. Turnkey Properties v Lusaka West Development Company Limited, B.S.K. Chit (Sued as Receiver), and Zambia State Insurance Company Limited. (1984) Z.R. 85 (S.C.);***
- 3. American Cynamid Company v Ethicon Limited [1975] A.C.396;***
- 4. J.K. Patel v. Mukesh Kumar Patel (1985) ZR 220 (S.C.);***

5. ***Theresa Kasonde Sefuke v. Christopher Hapanti Chimanya (Sued in his capacity as the Administrator of the Estate of S. Chimanya) (1993) S.J. 70 (H.C.);***
6. ***Mumba v. Zambia Fisheries and Fish Marketing Corporation Limited (1980) ZR 135;***
7. ***Colgate Palmolive (Z) Inc. v. Chuka and others Appeal No 181 of 2005;***
8. ***Kalusha Bwalya v. Chadore Properties and another Appeal No. 222 of 2013;***
9. ***Harton Ndove v National Educational Company of Zambia Limited (1980) Z.R. 184 (H.C.);***
9. ***Fellows and Son v. Fisher [1976] Q.B.D. 122 p. 123;***
10. ***Mwanza v. Chilanga Cement PLC 2011/HP/294 [2012] ZMH 60;***
11. ***Ahmed Abad v. Turning Metals Limited (1987) ZR 86*
***Tommy Mwendalema v. Zambia Railways Board (1978)*
Z.R. 65 (S.C.)****

Legislation and materials referred to:

1. ***The High Court Chapter 27 of the Laws of Zambia;***
2. ***Cheshire, Fifoot & Furmstone Laws of Contracts 2001, 4th Edition page 459; and***
3. ***Rules of the Supreme Court 1999 edition.***

This ruling is in respect of an application for Inter parte Order for Interim Injunction and supporting affidavit filed by the Plaintiff on 21st January, 2020. The Injunction was previously granted *ex parte* on 5th February, 2020 and I ordered that the same application be heard *inter parte* in the interest of justice on 18th February, 2020.

A brief history of the matter was that the Plaintiff commenced action by way of Writ of Summons and Statement of Claim dated 21st January, 2020 seeking the following substantive reliefs:

1. ***Specific performance of the Restrictive Covenant between the Plaintiff and the 1st and 2nd Defendants;***

- 2. An Injunction to restrain the 1st and 2nd Defendants from staying in Zambia while the restrictive covenant is in effect;**
- 3. An order for Restitution damages against the 1st, 2nd and 3rd Defendants;**
- 4. An order restraining the 3rd Defendants from engaging the 1st and 2nd Defendants under contracts of employment during the subsistence of the Restrictive Covenant between the Plaintiff and the 1st and 2nd Defendants;**
- 5. Special damages of K 2,500, 000.00 against the Defendants that is broken down as follows:**
 - K 2, 000,000.00 for the Plaintiff being unable to attend to clients due to lack of medical personal thereby losing cliental amount.**
 - K 500, 000.00 Expenses incurred by the Plaintiff for Ingress of the Defendants;**
- 6. Damages for breach of contract amounting to K 1,000,000.00 against the 1st and 2nd Defendants;**
- 7. Interest on the sum due;**
- 8. Any other relief the court may deem fit; and**
- 9. Costs.**

The Plaintiff further filed an Interim injunction pursuant to Order XXVII Rule 4 of the High Court Rules Chapter 27 of the Laws of Zambia. The Application was filed with an Affidavit in Support and Skeleton Arguments on 21st January, 2020. The Defendants filed their defence on 10th February, 2020 and their Affidavit in Opposition of the application for the Interim Injunction on 14th February, 2020.

The matter came for hearing of the application for interim Injunction on 18th February, 2020 where Mr. G. Tembo from Messrs. James & Doris

Legal Practitioners counsel for the Plaintiff was present. Counsels for the Defendants Mr. R. Chafwakala and Mr. M. Kabisa from Messrs. Silweya and Company were also in attendance.

Mr. Tembo submitted that the application was made pursuant to **Order XXVII of chapter 27 of the Law of Zambia** and **Order 29 Rule 1 of the White Book**. Mr. Tembo wished to rely on the Affidavit in Support deposed of by Bishop Paules Yowakim and the applicants list of authorities. The Deponent deposed that in August 2018 Coptic Hospital engaged the 1st and 2nd Defendants who were a couple based in Egypt as medical practitioners at its premises in Lusaka, Zambia. The 1st Defendant was a medical practitioner that specialized in Urology while the 2nd Defendant was not specialized. The Deponent averred that by agreements, the 1st and 2nd Defendants were to be in the employ of Coptic Hospital for a period of 2 years, commencing on 1st August, 2018 until 31st July, 2020. The 1st and 2nd Defendants signed the aforementioned agreements wherein clause 2 contained restrictive covenant. The restrictive covenant related to the Defendants agreeing to stay outside Zambia for a period of two years after the termination of their engagements with the Plaintiff. Produced and marked '**BPY1-2**' are copies of the agreements. The Deponent alleges that the Plaintiff was put to great expenses in order to engage the 1st and 2nd Defendants inclusive but not limited to Work permits from Department of Immigration, Practicing Certificates with the Health Profession of Zambia, Air Tickets for the Defendants and their children, accommodation and other numerous expenses.

On 30th October, 2019 the 1st and 2nd Defendants left Coptic Hospital where they were residing and did not return thereby unilaterally terminating their contracts of employment. The Deponent avers that the Defendants have since take up employment with a competing medical

facility, Forest Park Hospital which is located within Lusaka Zambia contrary to the covenants in the agreements. In light of the said breach of contracts and of the said covenants, Coptic Hospital has lost its reputation, competitive advantage, human resource investment, trade secrets and private confidential information and its clients were at risk of being used to the detriment of the Coptic Hospital to the advantage of the 3rd Defendant.

Mr. Tembo in his *viva voce* submissions contended that this matter was a proper case where restrictive covenants could be enforced. The existence of the covenant which made reference to the policies where the restrictive covenant is obtained was not disputed. Mr. Tembo referred the courts to the book of *Chesire, Fifoot & Furnstone Laws of Contracts 2001, 4th Edition page 459* where it stresses that a restrictive covenant be applied as it tries to protect trade secrets of former employer. Mr. Tembo submitted that the Defendants in their Affidavit exhibited 'MM3' and numerous contacts they come across by virtue of their employment. Mr. Tembo argued that the period of two years was a reasonable period and that the faculty restricting employment in Zambia of the 1st and 2nd Defendants was justifiable.

Mr. Tembo confirmed that the 1st and 2nd Defendants were currently employed by the 3rd Defendant who offered direct competing services and trade secrets as those offered by the applicant. The applicant was further at risk as the distance between the two institutions is less than 3km. Mr. Tembo prayed that the ex parte injunction be made permanent.

Mr. Chafwakala relied on the Affidavit in Opposition deposed by Dr. Michael Magdy filed on February 2, 2020. The deponent deposed that he entered into a Contract of Employment with Coptic Hospital to work as a Volunteer Physician for one (1) year beginning 1st August, 2018 and

ending 30th July, 2019. The Contract of Employment was signed in Egypt between himself and a representative of Coptic Hospital. Produced and marked 'MM1' was a copy of the Contract of Employment. The 2nd Defendant who was the deponent's wife was also serving for the same duration but did not sign a Contract of Employment. On dates unknown the 1st and 2nd Defendants were given copies of the regulations, penalties and general policies for the hospital administration which was signed in Egypt but execution could not be completed due to the absence of witnesses. The Plaintiff additionally did not sign. Produced and marked '**MM2**' was a copy of the said regulations. The Deponent deposed that the Defendants served the terms of their contracts that automatically terminated. The Defendants however continued to work until 15th October, 2019 when they were officially released, allowed and recommended to by Coptic to engage in any employment. Produced and marked '**MM3**' was the release and recommendation letter. After having been released by Coptic Hospital the Defendants were employed by the 3rd Defendants. The Defendants denied signing contracts of employment with Coptic Hospital for a two year period. The Defendants further denied signing restrictive covenants forbidding them from working for any medical institution in Zambia. The Defendants furthermore denied having breached any contract with of employment with Coptic hospital. The deponent alleged that any expense incurred by the Plaintiff during the 1st and 2nd Defendants term of employment was the Plaintiff's obligation as an employer.

The Defendants refuted that Coptic Hospital had lost its reputation, competitive advantage and human resource investment, trade secrets and private confidential information as a result of the 1st and 2nd Defendants departure.

Mr. Chafwakala in his *viva voce* submissions argued that the established doctrine for the grant of an injunction was in the case of **Shell and BP v. Conidaris (1975) ZR 174**. Mr. Chafwakala averred that they were struggling to find the relief sought by the Plaintiff. Mr. Chafwakala concluded that the Plaintiff was merely inconvenienced with the departure of the 1st and 2nd Defendants whose contracts of employment expired. Mr. Chafwakala further averred that the Defendants were released by the Plaintiff as exhibited on 'MM1' and 'MM3'. Mr. Chafwakala argued that the irreparable injury as claimed by the Plaintiff must be substantiated. Mr. Chafwakala stated that the Plaintiff was claiming several breaches of notification that could be remedied by damages. Mr. Chafwakala referred the court to the case of **Turnkey Properties v. Lusaka West Development and others (1984) ZR** that cured the element of influence to the final outcome of the case by the shifting of balance of convenience to strengthen the Plaintiffs case. Mr. Chafwakala stated that the essence of an Injunction was to maintain the status quo of the parties but in the present instance it shifted the advantage to the Plaintiff. In that vein the Defendants shall be disadvantaged. Mr. Chafwakala prayed that the injunction be dismissed with costs.

In addition Mr. Kabisa stated that when the Plaintiff case was looked at, they agreed that there was a prima facie case that was established. Mr. Kabisa argued that the Plaintiff failed to show that there was a restrictive covenant in the contract of employment in question that restrained the 1st and 2nd Defendants. Mr. Kabisa averred that there was a clause that the contract of employment was for two years but the contract of employment before the court as per 'MM1' show that the contract of employment was for one year and not two as alleged. Mr. Kabisa argued that by giving evidence that the contract was for two years shows that

the basis of an injunction was nonexistent. Mr. Kabisa further argued that there was evidence in the defence that showed that the Defendants were released by the Plaintiff after the contract has expired and recommended that they could work elsewhere that required their services. These was exhibited on 'MM3' and were documents authorised by the Plaintiff. Mr. Kabisa contends that the Plaintiffs regulations and rules that the Defendants stay away from Zambia was unreasonable as taking Zambia as a whole is wide. This was instructive in the case of **J.K. Patel v. Mukesh Kumar Patel (1985) ZR 220 (S.C.)** Mr. Kabisa prayed that court discharges the injunction with costs.

In Reply, Mr. Tembo stated that the Plaintiff in their Writ of Summons listed a number of claims seeking damages as compensation and other such as the 1st and 2nd Defendants staying outside Zambia is a claim for specific performance. Mr. Tembo submitted that the Plaintiffs claims were clear and that the Defendants had no defence as their defence consisted of bare denials. Mr. Tembo verified that the Injunction was there to maintain the status quo as there would be irreparable damage. Mr. Tembo highlighted that the case of **J.K. Rambai Patel case** had been misapplied as the Supreme Court did not make a final determination as whether to restrain from Zambia was reasonable or not. The 1st and 2nd Defendants of Egyptian nationality. Mr. Tembo submitted that restriction from Zambia with exclusion of the whole world was reasonable and that the process was justifiable and enforceable. Mr. Tembo prayed that injunction be maintained as discharged.

The Applicant in their submissions submitted that it was necessary for the Court to order that the 1st and 2nd Respondent refrain from engaging in any form of employment in Zambia during the 2 year period after the termination of the contract with the Applicant. The Applicant further prayed that the 3rd Respondent be restrained from engaging the 1st and

2nd Respondents in contracts of employment. The Applicant averred stated that the court was empowered to grant an injunction by **Order XXVII of the High Court Rules Chapter 27 of the Laws of Zambia** that provides:

In any suit in which it shall be shown, to the satisfaction of the court or 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 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 judge may seem meet, and, in all cases in which it may appear to the court or Judge to be necessary for the prevention 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 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 such as rents and profits, as to the court or a Judge may seem proper.

Order 29 Rules of the Supreme Court White Book similarly provides as follows:

1. Application for injunction

(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the case is one of urgency such application may be made ex parte on affidavit but, except as aforesaid, such application must be made by motions or summons.

The Applicant listed a number cases that decided on the consideration that must be met before an injunction is granted. For avoidance of repetition a few shall be selected. The leading case being **American Cyanamid Co. v. Ethicon Co. Ltd (1975) AC 396** at page 406 the court had this to say:

The objectives of the interlocutory injunction is to protect the plaintiff against injury by violation of his rights for which he could not be adequately compensated I damages recoverable in the action if the uncertainty were resolved in his favour at trail but the Plaintiffs need for such protection must be weighed against the corresponding need of the defendant to be protected against the injury from his having been prevented from exercising his own right for which he could be adequately compensated under the plaintiffs undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where the balance of convenience lies.

In *Shell and BP Zambia Ltd v. Conidaris (1975) ZR 174*, the Supreme Court Stated:

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 irreparable injury; mere inconvenience is not enough. Irreparable injury means which is substantial and can never be adequately remedied or atoned for by damages.

Further in the case of *Turnkey Properties v. Lusaka West Development Co. Ltd, BSK Chiti Chairman of Telcel (Sued as Receiver) and ZSIC (1984) ZR 85* the Supreme Court stated:

An interlocutory injunction is appropriate for the preservation or restoration of a particular situation pending trial; it is improper for a court hearing an interlocutory application to make comments which have the effects of preempting the decision of the issues which are to be decided on the merits at the trial; an Interlocutory Injunction should not be regarded as a device which an applicant can attain or create new conditions favourable only to him. In application for an Interlocutory Injunction the possibility of damages being adequate remedy should always be considered.

The Applicant submitted that they needed to be protected from irreparable injury that would arise by the current employment of the 1st and 2nd Respondents to the 3rd Respondent. The Applicant described the conditions that need to be met in order for the court to grant an injunction. The conditions were listed as follows:

- i) The Applicant may suffer irreparable injury;

- ii) That the right to relief sought by the Applicant is clear;
- iii) That the Applicant must not try and create a situation favourable to himself; and
- iv) That damages cannot adequately compensate the Applicant.

The applicant contends that the Applicant satisfied the conditions required for an injunction to be granted. The Applicant explained that the Writ of Summons showed that the Applicant was seeking an Order for Specific Performance of a term in the contract of employment with the 1st and 2nd Respondent. The Applicant in paragraph 10 of the Affidavit stated the relevance of the restrictive clause in preventing irreparable damage. The Applicant alluded to the fact that if the Injunction was not granted the Applicant would suffer irreparable damage.

The Applicant alleged that the right of action arose from the contract which the 1st and 2nd Respondents entered into with the Applicant. The Applicant revealed that the Court was empowered to grant specific performance of contracts. The Applicant supported their submission with the case of **Theresa Kasonde Sefuke v. Christopher Hapanti Chimanya (Sued in his capacity as the Administrator of the Estate of S. Chimanya) (1993) S.J. 70 (H.C.)** where it was held:

The equitable jurisdiction of the doctrine of specific performance of the contract requires that the person relying on it a step beyond the executory stage of the contract.

The Applicant argued that it was settled practice that once terms had been embodied in a written document, parole evidence is not acceptable. This was the position held in the case of **Mumba v. Zambia Fisheries and fish Marketing Corporation Limited (1980) ZR 135** where it was held that:

Where the parties have embodied the terms of the contract into a written document, extrinsic evidence is not admissible to add to, vary, subtract from or contradict the terms of the written documents.

The Applicant disclosed that the parties to the contract were of legal capacity and were therefore bound by the terms of the Agreement. This assertion was supported by the cases of **Colgate Palmolive (Z) Inc. v. Chuka and others Appeal No 181 of 2005** and **Kalusha Bwalya v. Chadore Properties and another Appeal No. 222 of 2013** where the Supreme Court held as follows:

If there is one thing more than another which public policy requires it is that men of full age and competent understanding shall have the utmost liberty for contracts and that their contracts when entered into freely and voluntarily, shall be sacred and shall be enforceable by the courts of justice.

The Applicant contends that with reference to the decided cases above the Applicant will suffer irreparable damage which cannot be atoned for in damages if the 1st and 2nd Respondents are not prevented from engaging in employment with the 3rd Respondent. The Applicant claimed that their trade secrets and confidential information and that of its clients are likely to be used to the advantage of the 3rd Respondent and detriment of the Applicant. The Applicant further contend that the dispute in the matter was for the enforcement of the 1st and 2nd Respondent to stay outside Zambia for a period of two years after separation of the Plaintiff. The Applicant asked for an order for an Injunction to be granted.

The Respondents in their skeleton arguments were opposed to the Applicants Application for the following reasons:

a. On the claim of 2 years Contracts of Employment running from the 1st August, 2018 until 31st July, 2020.

The Respondents allege that the assertion by the Applicant that the contract of service were to run for 2 years were incorrect and misleading. The Respondents averred that the contracts of employment were only for the duration of a year namely 1st August, 2018 to 30th July, 2019. The Respondents allege that the Applicant attempted to create a 2 year term contract of employment which was not mentioned in the contract itself. This according to the Applicant counted as extrinsic evidence whereby the terms of the contract were clear and unambiguous. The applicant stated that the introduction of extrinsic evidence was frowned upon in the case of *Holmes v. Buildwell Construction Company Limited (1973) ZR page 97* the court in this case stated that :

Where the parties have embodied the terms of their contract in a written document, extrinsic evidence is not generally admissible to add, vary, subtract from or contradict the terms of the written contract.

The Applicant alluded to the fact that the terms of the contract were clear and unambiguous and therefore the court could not read into the terms of the employment contract that the parties did not agree upon. In light of this the Respondents claim that for the Applicant to allege that the term of employment was for two years is an attempt to add or vary the contract and was therefore inadmissible.

b. On the claim that clause 2 of the said contracts of employment contains restrictive covenants by which the said Respondents

agreed to stay out of Zambia for a period of 2 years after the termination of their engagement with Coptic Hospital

The Respondents contend that clause 2 is unenforceable for the following reasons. The first reason being that the document was not fully executed by the Applicant and, there was no witness present to acknowledge the document. The second reason was that the document was a pre-designed form drafted by the employer that denied the employee the right to negotiate the terms therein. The third reason is that clause 2 is too broad and therefore unreasonable and enforceable as it restricts the Respondent from having access to any part of Zambia. Inclusive of parts where the Applicant is not operating from. In the case of *J.K. Patel v. Mukesh Kumar Patel (1985) ZR 220 (S.C.)* it was held that:

A binding out clause debarring servant who is an engineer from taking employment in the whole of Zambia is too wide to be considered as reasonable.

The Respondents prayed that the court find clause 2 unreasonable.

- c. On the purpose for the existence of the restrictive covenants in the said contracts of employment as spelt out in paragraph 10 of the Applicants affidavit in support of ex-parte summons for an interim injunction referred to fully above.**

The Respondents claimed that the contract of employment had no restrictive clause restraining the Respondents from providing medical services in Zambia.

- d. On the claim that the Plaintiff was put to great expense in order to engage the 1st and 2nd Respondent inclusive but not limited to obtaining work permits from the department of**

immigration, obtaining of practicing certificates from the Health Professions of Zambia, air tickets for the said defendants and their children, School fees and accommodation among others.

The Respondents contend that the expenses incurred by the Applicant to engage the Respondents were his rightful obligations as an employer and as such the claim was unreasonable. In the case of **J.K. Rambai Patel** (*supra*) the court held that:

(ii) The reason for imposing the restriction that is that the plaintiff did not wish other people to take advantage of the fact that he had paid the defendant's airfare could never be held to be reasonable.

In regards to discharging the injunction, the Respondents referred the court to the case of **Ndove v. National Educational Company Limited** [1980] ZR 184 where it was held that:

Before granting an interlocutory injunction, it must be shown that there is a serious dispute between the parties and the plaintiff must show on the material before the court, that he has any real prospect of succeeding.

The Respondent refuted that the Applicant had any real prospect of succeeding as, there was no restrictive covenant in the contract of employment, the Respondents did unilaterally terminate their employment and the Applicant recommended that the Respondents could engage anywhere else.

The Respondent additionally referred to the court to the **Turnkey Properties Limited case** cited and quoted above that stated that it was important for the court to maintain the status quo. The Respondents

thereafter referred the court to the case of **Fellows and Son v. Fisher [1976] Q.B.D. 122 p. 123** where Lord Denin said:

...Nevertheless the need for immediate decision is such that the court has to make an estimate of the relative strength of each party's case. If a Plaintiff makes out a prima facie case, the court may grant an injunction. If it is a weak case, or it may be met by strong defence, the court may refuse the injunction. Sometimes it means that the court virtually decides the case at that stage. At other times it gives the parties such good guidance that the case is settled. At any rate 99 cases out of 100, the matter goes no further.

The Respondents referred to the **Shell and BP Zambia Limited case** that has been cited and quoted above and averred that it was clear that the Applicants in the case herein did not suffer irreparable injury. The Applicant further neglected to show that the irreparable injury can never be atoned to or remedied by damages. The Respondents alleged that the Applicant was merely inconvenienced. The Respondents alluded to the fact that the Injunction must be discharged as the Applicant failed to meet the criteria set out in the **Shell case** mentioned above. This was expounded on in the case of **Mwanza v. Chilanga Cement PLC 2011/HP/294 [2012] ZMH 60** where the court maintained that:

The Applicant has not satisfied the requirements for the granting of an injunction as he has failed to demonstrate that he is likely to suffer irreparable injury in terms of the principle laid down in the case of Shell and BP...for the foregoing reasons...I am not satisfied that this is a proper case in which to confirm or maintain the ex-parte order of interim injunction...

Lastly the Respondents referred to the case of ***Ahmed Abad v. Turning Metals Limited (1987) ZR 86*** where the court had this to say on the discharge of an injunction:

We are satisfied that in the present case an injunction was inappropriate as damages would be totally adequate. In our view the circumstances which must obtain before an injunction is granted do not exist in the present case, namely that damages would be an adequate remedy.

The Respondents concluded that the remedy of an injunction was inappropriate as the Applicant was not likely to suffer unquantifiable damages. Damages according to the Respondents was an adequate remedy.

I have carefully considered the submissions from both the Plaintiff and the Defendants. After evaluation of both the Plaintiff and Defendant's submission, it is not in contention that the 1st Defendant entered into a Work Contract with the Plaintiff. It is prudent to point out that the 2nd Defendant did not enter into a work contract with the Plaintiff. However what lies in contention is the terms of the work contract. The 1st Defendant entered into a contract with the Plaintiff on 9th July, 2018 for a period of one year. The said contract was exhibited and marked 'MM1'. The contract specifically stated:

The duration of this contract is one year starts from 1st August, 2018 and ends on 30th July, 2019 without the need for prior notice from any party.

The 1st Defendant and 2nd Defendants signed a document acknowledging that they would abide by the rules and regulations set out therein. These documents were exhibited and marked 'MM2' and 'MM3'

respectively. A close look at the 'MM2' and 'MM3' shows that these documents are in contradiction with the Work Contract. The regulations state:

The doctor had to commit to staying outside Zambia for two years after his term after his term at the Coptic Hospital in Zambia has expired. During which he is in a contract with any other party within Zambia.

The Work contract does not contain the aforementioned clause. The clause therefore intends to add to and vary the work contract. This has been frowned upon in a number of cases. The Defendant's accurately cited and quoted the Holmes case (which was the same principle applied in the Mumba Case cited and quoted above) which rendered inadmissible extrinsic evidence that attempt to add, vary or subtract from or contradict the terms of a written contract. The document containing Coptic Regulations attempted to do so and is accordingly inadmissible and shall not be relied upon.

The Defendants complied with the terms of the work contract and on the expiration of the contract, worked an additional three months before they were released by the Human Resource Manager of Coptic Hospital Mr. George Mumba. Mr. Mumba drafted and endorsed both Defendant's recommendation letters. It is therefore astounding that the Plaintiff has applied for an injunction to prevent the Defendants from working for the 3rd Defendant when as a matter of fact Plaintiff released the Defendants from their employment with Coptic Hospital.

In light of the foregoing I have to establish whether the plaintiff has satisfied the conditions set out in upholding the Injunction namely that the right to relief is clear, the injunction is necessary to protect the plaintiff from irreparable injury and the said injury cannot be atoned by

damages, a mere inconvenience shall not suffice. In consideration of the arguments presented by the parties, the right to relief is not clear as what the Plaintiff was claiming in the statement of claim cannot be ascertained as they were not spelt out in the Work contract. Therefore the Plaintiff's demands for Specific performance of restrictive covenant, special damages and damages for breach of contract are not feasible as they cannot be ascertained from the work contract.

It is incontestable that the injunction is not a permanent injunction but an interlocutory injunction that subsists until the final determination of the matter. Lord Diplock, in ***American Cyanamid case***, illustrates the same point that the grant of an interlocutory injunction is a remedy that is both temporary and discretionary.

The **Supreme Court Practice Direction 29/1/17** is instructive; It states:

If on hearing of a motion by a plaintiff for an injunction, or, in the alternative, to continue an interim injunction already obtained ex parte, it appears that the interim order was irregularly obtained by suppression of facts, the Court may discharge the ex parte order without any cross notice of motion for that purpose by the defendant...

Relatedly in the case of **Tommy Mwendalema v. Zambia Railways Board (1978) Z.R. 65 (S.C.)** stated as follows:

An interim injunction obtained ex parte is discharged on the grounds of non-disclosure of material facts...the court

nevertheless proceeds to consider whether or not on the merits a fresh interim injunction should be granted.

In view of the current injunction, the Plaintiff neglected to exhibit the work contract entered into with the 1st Defendant. The Plaintiff merely exhibited the work regulations that was signed by both the Defendants. For the foregoing reasons, I therefore vacate the order of interlocutory injunction granted on 5th February 2020 in favour of the plaintiff.

I make no order as to costs.

DATED THIS 30TH DAY OF APRIL, 2020.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a vertical line and a diagonal stroke.

.....
**W.G.K MUMA
HIGH COURT JUDGE**