

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

(Civic Jurisdiction)



2018/HP/ARB /024

**IN THE MATTER OF:
AND**

THE ARBITRATION ACT NO. 19 OF 2000

IN THE MATTER OF:

**SECTION 11 OF THE ARBITRATION ACT
NO. 19 OF 200**

AND

IN THE MATTER OF:

**AN APPLICATION FOR AN INTERIM
INJUNCTION PENDING THE
COMMENCEMENT AND CONCLUSION
OF ARBITRATION PROCEEDINGS**

BETWEEN:

TIANA TIA MANUFACTURING ZAMBIA LIMITED

APPLICANT

AND

ELIJAH NYIRENDA

RESPONDENT

BEFORE THE HON. LADY JUSTICE C. LOMBE PHIRI IN CHAMBERS

For the Applicant:

Ms. M. Nawa – K. Mwale & Co

For the Respondent:

G. C. Musonda – Messrs Dzekedzeke & Company

R U L I N G

I have heard the application before me raised pursuant to Orders 14A and 33 r 3 and 7 of the RSC 1999 ed. These objections are twofold. Firstly, that the Respondent was not served with the Order of this Court hence he was unaware of it. Secondly that the action that the contemnor has taken in disobedience of the Court's Order is not disclosed.

I have carefully considered the arguments in support of the application including the affidavit in support. I have also listened to counsel's submission. Equally I have heard the submissions in opposition by Counsel for the Applicant.

I must state that this is a Court of Record. The Record shows that on 7th February, 2019 the parties appeared before this Court. On that day the Applicant appeared by Messrs M. K. A Chiume whilst the Respondent was in person. The court made an ex tempore Ruling of injunction clearly stating that the Respondent was enjoined either by himself, his agents or servants or representatives from using as collateral, selling or sub diving the property until final determination of the Arbitration proceedings. I also warned the Respondent that if the Order of the Court was disobeyed this would amount to contempt of Court. It is therefore perplexing for the Respondent to today allege that he was not aware of the Courts Orders. The fact that the Order was not perfected and subsequently served on the Respondent is not an excuse. An Order of the Court starts running when it is pronounced by the Court not on perfection. And in this case the Respondent having been present at the hearing where this Order was pronounced is deemed to have received adequate Notice of the Order and its contents. The ground for service is accordingly dismissed.

Turning to the objection relating to specifying the alleged action that the contemnor is being brought to Court for the record will show that the

Injunction Order contained very specific action that the Respondent was reformed from carrying out. These were subdividing, selling or pledging the land as security.

The court in its Order did not make a blanket statement regarding "*maintenance of status quo.*" The Respondent is therefore justified in his objection when he states that the specific action he has been cited for is not contained in the Notice or the Statement before Court.

I find that the failure by the Applicant to state the specific action that was carried out in disobedience of the Court's Order has not been stated. This is fatal to the application being sort. I also find that my finding deals with the main issue before the Court. There being no Order of the Court disobeyed the application for committal is also void of merit. The objection on this ground succeeds.

Therefore, the Committal proceedings raised by the Applicant are dismissed in total.

Costs for the Respondent.

Leave to Appeal is granted.

Dated at Lusaka this 21st day of **February, 2020.**



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C. LOMBE PHIRI
JUDGE