

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

2019/HP/2036

BETWEEN:

PATSON CHOLA

AND

**GEORGE NAMAYALA
THERESA CHILETA NAMAYALA
PRUDENT SOLUTIONS LIMITED
COLLINS KAPUNGWE KABALI**

PLAINTIFF

**1st DEFENDANT
2nd DEFENDANT
3rd DEFENDANT
4th DEFENDANT**



**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 26th
DAY OF JUNE, 2020**

For the Plaintiff : Messrs Robson Malipenga & Co

For the 1st Defendant : in person

For the 2nd Defendant : in person

For the 3rd and 4th Defendants : Messrs G.M. Legal Practitioners

R U L I N G

CASES REFERRED TO:

- 1. American Cyanamid v Ethicon Limited 1975 1 ALL ER 504**
- 2. Mwenya and Randee v Kapinga 1998 SJ 12**

LEGISLATION REFERRED TO:

- 1. The High Court Rules, Chapter 27 of the Laws of Zambia**



This is a ruling on an application made by the plaintiff for an order of interim injunction that was filed on 20th December, 2019, pursuant to Order 27 of the High Court Rules, Chapter 27 of the Laws of Zambia.

The affidavit in support of the application, which is deposed to by the plaintiff, states that the plaintiff entered into an agreement with the 1st and 2nd defendants, in which he allowed the 1st and 2nd defendants to use his certificate for the property No S/D 1037 of Stand No 7426 Kaunda Square, as shown on the agreement letter exhibited as 'PC1' to the affidavit. He further avers that the 4th defendant insisted that the loan not only be guaranteed by him, but also be applied for by him.

Thus, he applied for the loan in the amount of K75, 000.00, which was paid in cash and transfer in the 3rd defendant's account. The averment is that a term of the agreement that the loan would be repaid to the 3rd defendant within thirty (30) calendar days, together with interest thereon at thirty five (35) percent, bringing the total amount to K101, 250.00.

The plaintiff alleges that the 4th defendant with intent to defraud, instead made him sign a purported funds receipt document, which he later discovered was a letter purporting to sell his house Plot No S/D 1037, Kaunda Square, which is exhibited as 'PC2' to the affidavit. It is contended that the plaintiff has never intended to sell house, and that on 18th December, 2018, he paid K10, 000.00 into the FNB bank account Commercial Branch which was provided by the 3rd and 4th defendants. Exhibited as 'PC3' is the deposit slip.

The plaintiff deposes that the 4th defendant has been threatening to evict him from his house, and has issued him with the notice to vacate, which is exhibited as 'PC4'.

The 3rd and 4th defendants filed an affidavit in opposition on 27th March, 2020. They state therein that on or about 15th October, 2019, the plaintiff entered into a contract with the 4th defendant for the sale of the property known as S/D 1037 of Stand No 7426, Kaunda Square. The 3rd and 4th defendants deny the averments that the 4th defendant has been threatening to evict the plaintiff from the property, and that he has issued a notice to the plaintiff to vacate the property as alleged.

I have considered the application. It was made pursuant to Order 27 of the High Court Rules, Chapter 27 of the Laws of Zambia, which provides that;

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

It is trite that there are principles that govern the grant of orders of injunction as laid down in the case of ***American Cyanamid v Ethicon Limited*** ⁽¹⁾. They can be summarised as follows;

1. *Is there a serious issue to be tried?*
2. *If yes, would damages be an adequate remedy?*
3. *If yes, the injunction should not be granted. If no then;*
4. *Where does the balance of convenience lie?*

Thus, the question that arises is whether the plaintiff as applicant has demonstrated that there is a serious question to be tried? The plaintiff alleges that the 4th defendant fraudulently made him sign a letter of sale for his property No S/D 1037 of Stand No 7426, Kaunda Square when he had in fact executed a loan agreement with him. The 3rd and 4th defendants on the other state that the plaintiff did not sign a loan agreement, but a contract of sale for the property.

Clearly from these averments, it can be seen that there is a dispute between the parties that needs to be tried. Therefore, the first requirement has been satisfied. The next issue is whether damages would be an adequate remedy? In the case of ***Mwenya and Randee v Kapinga*** ⁽²⁾ it was held that;

“The law takes the view that damages cannot adequately compensate a party for breach of the contract for sale of an interest in a particular piece of land or of a particular house however ordinary”.

This case laid down the principle that damages have been found not to be an adequate remedy in matters concerning land. That being the position, I accordingly grant the order of injunction restraining the 3rd and 4th defendants, whether by themselves, their agents, servants or whomsoever, from trespassing, committing nuisance, threatening to evict or evicting the plaintiff and enjoying quiet possession of the property known as S/D 1037 of Stand No 7426, Kaunda Square until final determination of the matter.

The following shall be the orders for directions in this matter;

1. That the defendants shall file their defences and counterclaims if any by 15th July 2020.
2. That the plaintiff shall file a reply and defence to the counterclaims if any by 30th July, 2020.
3. That the defendants shall file a reply to the defence to the counterclaim if any by 13th August, 2020.
4. That there shall be discovery of documents by 27th August, 2020.
5. That there shall be inspection of documents by 10th September, 2020.
6. That the parties shall file a bundle of pleadings and bundles of documents by 24th September, 2020.
7. That there shall be liberty to apply by either party.

8. That the matter shall come up for trial on 19th November, 2020 at 09:00 hours.

Costs shall be in the cause, and leave to appeal is granted.

DATED AT LUSAKA THIS 26th DAY OF JUNE, 2020

S. Kaunda
S. KAUNDA NEWA
HIGH COURT JUDGE