

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

**2019/HP/0515**

**BETWEEN**

**PACIFIC CIGARETTE COMPANY**



**PLAINTIFF**

**AND**

**ALLA MCNAB**

**1<sup>st</sup> DEFENDANT**

**COPPERLEAF TOBACCO ZAMBIA LIMITED 2<sup>ND</sup> DEFENDANT**

**BEFORE THE HON. MR. JUSTICE W.G.K MUMA IN CHAMBERS  
ON THE 28<sup>TH</sup> DAY OF JANUARY, 2020.**

For the Plaintiff : Mr. S.Mambwe, Messrs Mambwe Siwila & Lisimba Adv

For the Defendant: Mr. Chisanga, Messrs. KMG Chisanga Advocates

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## **RULING**

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### **CASES REFERRED TO:**

- 1. Shell & B.P Zambia Limited v Conidaris and Others (1975) ZR 174 (SC)**
- 2. Tunkey Properties V Lusaka West Development Company Limited, Bsk Chiti (Sued As Receiver) and Zambia State Insurance Corporation Limited (1984 ZR 85 (SC))**

### **LEGISLATION REFERRED TO:**

- 1. Order 27 Rule 1 of the High Court Act Cap 27 of the Laws of Zambia**

This is the Plaintiff's application for an injunction granted ex-parte on 1<sup>st</sup> April, 2019 which ordered that the Defendant whether by

himself, servants, agents employees and/or any person howsoever described acting on his behalf be restrained from taking over management of the company known as Copperleaf Tobacco Zambia Limited, Lusaka and from interfering in any way in the said management of the company until final determination of the arbitral proceedings pursuant to agreement between the parties or further order of the Court.

Counsel for Plaintiff relied on the affidavit in support of the ex-parte summons for interim injunction.

The affidavit of one Aurther Molai avers that on or about 13<sup>th</sup> May 2016, the Plaintiff and Defendant entered into a sale of shares agreement whereby the Plaintiff purchased 51% shares in an existing company called Copperleaf Tobacco (CLT).

That the same date the Plaintiff and Copperleaf Tobacco Company Limited entered into a management services agreement whereby the Plaintiff was designated as the management company for the purpose of managing the day to day affairs of Copperleaf Tobacco.

That in the management services agreement the management team was to run the company for a renewable period of 10 years.

That by letter dated 21<sup>st</sup> March, 2019, the defendant caused his lawyers to author a letter in which he demanded among others, that the Plaintiff stops its management of Copperleaf Tobacco on account of alleged breaches to the sale of shares agreement.

That the resultant dispute ought to be resolved by way of arbitration.



That the Plaintiff stands to suffer irreparable injury if the defendant is not stopped from proceeding with his intended breach of the management and sale of shares agreement in that apart from the time and capital invested in Copperleaf Tobacco, the Plaintiff also invested human capital.

Counsel for the Defendant relied on the affidavit in opposition sworn by one Alan McNAB.

The Affidavit avers that the dispute between the parties arose not for the reasons advanced by Plaintiff but due to some of the following reasons:

- a. Breach of fiduciary duties by the officers of the Plaintiff tasked with providing management services to the plaintiff;
- b. Fraudulent and dishonest dealings with the lease relating to Plot Number 7404 Washama Road Lusaka;
- c. Payment of bonuses to management without prior approval of the same from the Board of Directors of Copperleaf; and
- d. Fraud, forgery and misrepresentation on the part of management relating to the description of the cigarette and packer maker contrary to what was agreed between the Board of Directors of Copperleaf and Management.

Further that the matter ought not to be referred to arbitration as the parties have agreed to terminate the sale of the shares agreement by mutual consent as well as to disengage by agreement from the performance of the management services agreement.

That the Plaintiff has embarked on operating a business styled as Picton Limited which is wholly owned by the Plaintiff and which is itself engaged in the production of Cigarettes under the brand of Copperleaf and that some of the staff of Copperleaf have started working for the said Picton Limited, without approval of the Director of Copperleaf.

That if the Court grants the injunction on the basis of this gross misrepresentation of facts, it is the shareholders and directors of Copperleaf who will suffer irreparable damage as Copperleaf will continue to be mismanaged by the Plaintiff.

I have applied my mind to the arguments augmented by both Counsels.

I have also paid a particular focus on the sale of shares agreement.

Clause 9 of the agreement provides for Arbitration it states;

**“Any dispute between the parties hereto in regard to;**

**9.1.1 the interpretation of or**

**9.1.2 the effect of or**

**9.1.3 any of the parties rights and obligation arising from or implementation of or**

**9.2.4 any matter arising directly or indirectly out of this agreement shall be submitted to and decided by arbitration.”**

Therefore it is a common ground that the dispute herein ought to be resolved by arbitration.



The only issue to be determined here is whether the ex parte injunction granted on 4<sup>th</sup> April 2019 ought to be confirmed or set aside.

The seminal principle on injunction is well known.

**Order 27 Rule 1 of the High Court Act Cap 27** rightly so empowers the Court to grant injunction where deserving and it states;

**“ 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 of Judge to issue injunction to such party.....”**

There are special considerations which the Court ought to observe in granting interlocutory injunctions; in the case of;

**SHELL AND BP ZAMBIA V CONIDARIS AND OTHERS (1975 ZR 174 (SC))**

The Supreme Court held;

**“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 injury which is substantial and cannot be adequately remedied or atoned for by damages, not injury which cannot be possibly repaired.”**

In Casu the dispute stems from the purported mishandling of the company's operations by the Plaintiff which subsequently triggered a step by the defendant and hence this dispute.

I shall not belabor to highlight the substantive issues of the dispute as this may lead to prejudice of the matter at arbitration stage.

The defendant's exhibit marked "**AGM2**" is a print out from PACRA upon which the defendant allege that the Plaintiff has embarked on operating a business styled as Picton Limited, which is wholly owned by the Plaintiff and which is itself engaged in the production of Cigarettes under the brand of Copperleaf.

The case of;

**TUNKEY PROPERTIES V LUSAKA WEST DEVELOPMENT  
COMPANY LIMITED, BSK CHITI (SUED AS RECEIVER) AND  
ZAMBIA STATE INSURANCE CORPORATION LIMITED (1984 ZR  
85 (SC))**

The Supreme Court held inter-alia:

**“an interlocutory intimation should not be regarded as a device by which an applicant can attain or create new conditions favourable only to himself.”**

The circumstances highlighted in this matter before me clearly do not support the grant of interlocutory injunction it is a trite rule that Judges should generally decline to grant injunctions where a party that is in breach of its own contractual obligations is the

applicant as such a party is by its own default or breach, disentitled from seeking the aid of equity.

It follows from what I have said that the ex-Parte injunction granted on 4<sup>th</sup> April, 2019 is discharged and I henceforth vacate the order accordingly.

Costs will follow the event.

**DELIVERED AT LUSAKA THIS 28<sup>th</sup> DAY OF JANUARY, 2020.**



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