

IN THE HIGH COURT FOR ZAMBIA

2020/HP/625

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)



BETWEEN:

MAYDAY MAMBO NAWA

APPLICANT

AND

MR. NJOBVU

RESPONDENT

**BEFORE THE HONOURABLE LADY JUSTICE P. K. YANGAILO, IN
CHAMBERS, ON 1ST DAY OF SEPTEMBER, 2020.**

For the Applicant: N/A

For the Respondent: N/A

RULING

CASES REFERRED TO:

1. *Shell and BP (Zambia) Limited vs. Conidaris and Others* (1975) ZR 174;
2. *Hondling Xing Xing Building Company Limited vs. ZamCapital Enterprises Limited* (2010) Z.R 30;
3. *Zambia State Insurance Corporation Ltd. vs. Dennis Mulope Mulikelela* - S.C.Z. Judgment No. 9 of 1990;
4. *Kajimanga vs. Chilemya* - (Appeal No. 50/2014) [2016] ZMSC 189;
5. *Turnkey Properties vs. Lusaka West Development Company Limited, B.S.K. Chiti (sued as Receiver) and Zambia State Insurance Corporation Limited* (1984) Z.R. 85; and
6. *American Cyanamid Company vs. Ethicon Limited* [1975] A. C. 396; [1975] 1 All ER 504.

LEGISLATION REFERRED TO:

1. *The High Court Act, Chapter 27, Volume 3 of the Laws of Zambia;*
2. *The Rules of the Supreme Court, 1999 Edition, London Sweet & Maxwell; and*

3. *The Lands and Deeds Registry Act, Chapter 185, Volume 12 of the Laws of Zambia.*

1 INTRODUCTION

1.1 This is a Ruling on an application for an Order of Interim Injunction restraining the Respondent from entering upon or under Stand No. CHONG/LN_7574/161, Lusaka, ("Subject Property") sought by the Applicant.

2 BACKGROUND

2.1 On 16th June, 2020, the Applicant filed herein an Originating Summons for an Order for recovery of possession of the Subject Property. On 23rd July, 2020, the Applicant, took out Summons for an Order of Interim Injunction pursuant to **Order XXVII, Rule 4 of The High Court Rules¹** and **Order 29, Rule 1 of The Rules of the Supreme Court²**.

3 AFFIDAVIT EVIDENCE

3.1 In the accompanying Affidavit in Support of the application sworn by **Mayday Mambo Nawa**, the Applicant, it is averred *inter alia*, as follows: -

1. *That the Applicant is the registered owner of the Subject Property as shown on exhibit marked "MMN 1";*
2. *That the Respondent illegally trespassed and erected a structure and wire fence on the Subject Property, thus restricting the Applicant the use of his land;*
3. *That the Respondent was written to by the Ministry of Lands as shown by exhibit marked "MMN 2";*

4. That the Respondent, in total disregard of the Applicant's demands, has continued to trespass upon the Subject Property.

3.2 The Respondent filed into Court an Affidavit in Opposition, deposed to by **Brown Ndhlovu**, the Respondent, wherein he averred *inter alia*, as follows: -

1. That in 2016, the Respondent approached a legal firm namely Marshall Chambers, that was dealing in the sale of land, who informed him that there were plots for sale in Palabana area of Chongwe District;
2. That the said firm took him for site viewing and allocated him the Subject Property, whereupon he paid a total sum of K130,000.00 to the said firm as shown by copies of receipts issued by the said firm marked "BN 1";
3. That subsequently, the Respondent was informed that a schedule of all the beneficiaries of the Palabana plots, had been compiled and submitted to the Commissioner of lands as shown by exhibit marked "BN 2";
4. That he has been waiting for the Commissioner of Lands' further action and has been taken aback by the Applicant's claim that he is the registered owner of the Subject Property, on which the Respondent built a three bedroom house as shown by exhibit marked "BN 3";
5. That granting an Order of Interim Injunction will highly prejudice the Respondent who has been on the said land for the past four years.

4 LEGAL SUBMISSIONS

- 4.1 In his brief submissions filed herein, the Applicant urges the Court to grant him an interim injunction and relies on the provisions of **Order XXVII, Rule 4** of **The High Court Rules**¹ and **Order 29, Rule 1** of **The Rules of the Supreme Court**².
- 4.2 The Respondent filed herein his submissions, in which he submits, *inter alia*, that the Applicant does not have a clear right to relief as the Respondent has an equitable interest in the Subject Property, which the Applicant ought to have noticed at the time of buying the Subject Property. He placed reliance on the case of **Shell and B.P. Zambia Limited v Conidaris and Others**¹ and **Order 29, Rule 1 (2)** of **The Rules of the Supreme Court**², which outlines the principles for granting of an interlocutory injunction.

5 THE LAW

- 5.1 I have carefully considered the Application by the Applicant, all the Affidavit evidence before me, the submissions and even the exhibits, which I found to be of great assistance to me in guiding me on the issue of the balance of convenience. I am indebted to Counsel for the cited authorities, which have made my task considerably more straightforward.
- 5.2 The issue for determination is whether or not the Applicant has met the threshold for the grant of an interim injunction to restrain the Respondent from

entering on the Subject Property. The three basic principles of law when a Court can grant an injunction are summarised as follows: -

1. That there must be a serious action to be tried at the hearing;
2. That there is a clear right of relief and that the Applicant has a good arguable claim to the interest he seeks to protect; and
3. That the Applicant would suffer irreparable harm or injury that cannot be atoned for by payment of damages.

5.3 The ***Shell and B.P. Zambia Limited v Conidaris and Others***¹ case, cited by the Respondent's Counsel, is one of the leading authorities, wherein it was stated as follows: -

"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 can never be adequately remedied or atoned for the damages, not injury which cannot be possibly repaired." (Court's emphasis)

5.4 In the case of ***Hondling Xing Xing Building Company Limited vs. ZamCapital Enterprises Limited***²,

Matibini SC. J., as he then was, reiterated the above principles and held that: -

"It is settled fundamental principle of Injunction law that Interlocutory Injunctions should only be granted where the right to relief is clear, and where it is necessary to protect a Plaintiff against irreparable injury; mere inconvenience is not enough."

5.5 In the matter of **Zambia State Insurance Corporation Limited vs. Dennis Mulope Mulikelela**³, it was stated by Gardner AJS that:-

"...of course, in order to entitle the Plaintiffs to an Interlocutory Injunction, though the Court is not called upon to decide finally on the right to the parties, it is necessary that the Court should be satisfied that there is a serious question to be tried at the hearing, and that on the facts before it there is a probability that the Plaintiffs are entitled to relief." (Court's emphasis)

6 ANALYSIS AND FINDINGS

6.1 Being guided by the above cited authorities, I have carefully perused the Affidavit evidence. It is clear from the Affidavit evidence and exhibit marked "MMN 1" that the Applicant is the title holder of the Subject Property. On the other hand, the Respondent has exhibited various receipts for payment of sums to a law firm going by the name and style of Marshall Chambers, which he alleges are in respect of purchase of the Subject Property. On the basis of these payments, a letter written to him by

Marshall Chambers shown as "BN 2" and the building that he erected on the Subject Property, the Respondent alleges that he has an equitable right to the Subject Property.

6.2 In determining who will be greatly inconvenienced if the interim injunction is granted, I addressed my mind to the provisions of **Sections 33, 34 (1) and 35** of **The Lands and Deeds Registry Act**³, which are all instructive on the fact that any title holder is regarded as the conclusive owner to a parcel of land. This is the case unless evidence is led that suggests that the title was acquired fraudulently. This position was reiterated in the Supreme Court Judgment of **Kajimanga vs. Chilemya**⁴, where it was held as follows: -

"1. A Certificate of Title is conclusive evidence of ownership of the property to which it relates. It can only be nullified if fraud in acquisition is proved;

2. An allegation of fraud must not only be clearly and distinctly alleged but it must also be clearly and distinctly proved by evidence. The standard of proving an allegation of fraud is higher than the civil law standard of proof."

6.3 It is trite law that a certificate of title is conclusive evidence of ownership. As it stands, the Applicant has demonstrated that he has title and in the absence of any

fraud vitiating such title, it is conclusive proof of his legitimate ownership.

- 6.4 In the case of ***Turnkey Properties vs. Lusaka West Development Company Limited, B.S.K. Chiti (sued as Receiver) and Zambia State Insurance Corporation Limited***⁵, the Supreme Court held *inter alia* that an interlocutory injunction is appropriate for the preservation of a particular situation pending trial and that such injunction should not be regarded as a device by which an applicant can attain or create new conditions favourable only to himself. In the same case, the Court also discussed the issue of the balance of convenience which should be considered by the Court by determining where it lies or in whose favour the scale tilts and whether more harm would be done by granting or refusing to grant the injunction as was held in the case of ***American Cyanamid Company vs. Ethicon Limited***⁶, where it was stated that the guidelines to be considered are whether the claimant has a strong or arguable case; the adequacy of damages as a remedy; the balance of convenience; and maintaining the *status quo*.
- 6.5 In relation to the present case, the Applicant is a title holder of the Subject Property as evidenced by Certificate of Title issued by the relevant Ministry on 29th April, 2020, while the Respondent does not have any offer of sale of the Subject Property from the relevant Ministry

and only has receipts for payment of sums of money to a law firm. Further, the Respondent has not shown where Marshall Chambers derived the right to sell the Subject Property on behalf of the relevant Ministry.

6.6 Without delving into the main action and looking at the facts presented before me, it is my considered view that the *status quo* should be maintained until the rights of the parties have been properly and finally determined by the Court and that this can be done by this Court granting the order of interim injunction to the Applicant who has title to the Subject Property. I am also of the view that in the present case, an award of damages would suffice as the injury, if any, to be occasioned to the Respondent who is not the title holder. Further, I find that the balance of convenience lies heavily in favour of my granting the injunction sought.

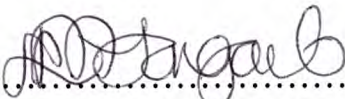
7 CONCLUSION

7.1 I, therefore, grant the injunction sought by the Applicant.

7.2 I make no order as to costs.

7.3 Leave to appeal is granted.

Delivered at Lusaka on 1st September, 2020.



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**P. K. YANGAILO
HIGH COURT JUDGE**