

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA**

2020/HP/0179

(Civil Jurisdiction)

BETWEEN:

KINGSLEY LIMBALI	1ST PLAINTIFF
GESTABLE CHIKAMBWE	2ND PLAINTIFF
CHRISTOPHER NENGULE	3RD PLAINTIFF
AND	
TRESFORD MWILA	1ST DEFENDANT
BOLAN MUSHITU	2ND DEFENDANT
STEVEN SILUNGWE	3RD DEFENDANT
ERNEST CHIBANGULA	4TH DEFENDANT
LINCOLN JERE AKA RINGO	5TH DEFENDANT
HENRY SHAMPOLONGO	6TH DEFENDANT
PETER MWAPE	7TH DEFENDANT
CHRISPIN MBEWE	8TH DEFENDANT
GILBERT MAFUTA	9TH DEFENDANT
DONALD KAMPAMBA	10TH DEFENDANT



***BEFORE HONOURABLE LADY JUSTICE P. K. YANGAILO, IN
CHAMBERS, ON 3RD DAY OF MARCH, 2020.***

For the Plaintiffs: Mr. M. Haimbe – Messrs. Malambo & Company

*For the Defendants: Mr. R. Kamena (Standing in for Ms. Marabesa)
– Legal Aid Board*

RULING

CASES REFERRED TO:

1. *Zambia State Insurance Corporation Ltd. vs. Dennis Mulope Mulikelela - S.C.Z. Judgment No. 9 of 1990;*
2. *Shell and BP (Zambia) Limited vs. Conidaris and Others (1975) Z.R. 174;*
3. *Hondling Xing Xing Building Company Limited vs. ZamCapital Enterprises Limited (2010) Z.R 30;*
4. *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*
5. *American Cyanamid Company vs. Ethicon Limited [1975] A. C. 396; [1975] 1 All ER 504.*

LEGISLATION REFFERED TO:

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

1 BACKGROUND

- 1.1 On 30th January, 2020, the Plaintiffs issued a Writ of Summons and simultaneously, took out *Ex Parte* Summons for an Order of Interim Injunction pursuant to **Order XXVII, Rule 4** of **The High Court Rules**¹.
- 1.2 The Plaintiffs, who are bus operators at Kulima Tower Bus Station, allege that the Defendants have been denying them access to Kulima Tower Bus Station and unlawfully collecting levies from the Plaintiffs, the consequence of which the Plaintiffs have suffered loss of money unlawfully collected and stand to suffer irreparable harm on each day that their legal right to access and operate from Kulima Tower Bus Station is infringed upon by the Defendants if they are not restrained by an injunction pending determination of the substantive matter.

1.3 The Plaintiffs therefore seek an Interim Injunction to restrain the Defendants from collecting any money or levies from the Plaintiffs and interfering with their operations at Kulima Tower Bus Station, hindering or preventing the Plaintiffs from accessing Kulima Tower Bus Station and from conducting their business as bus service operators at the said station, until further Order of the Court.

2 AFFIDAVIT EVIDENCE

- 2.1 In the accompanying Affidavit in Support sworn by the 1st Plaintiff, it was averred *inter alia*, that the Defendants who are not constituted as a legal entity nor appointed by Lusaka City Council, have been unlawfully collecting levies from the Plaintiffs for use of Kulima Tower Bus Station.
- 2.2 It was further averred that the Plaintiffs were forcefully and illegally ejected from Kulima Tower by the Defendants and despite their request for Police assistance, none came forth and this resulted in the Plaintiffs being assaulted.
- 2.3 It is also averred that approximately K63,000.00 has been unlawfully collected from the Plaintiffs by the Defendants, which has resulted in the Plaintiffs suffering irreparable harm. That the Plaintiffs accrue substantial losses of approximately K1,200.00 per day in unlawful levies collected by the Defendants.

- 2.4 I directed that the matter proceeds *inter parte* on 18th February, 2020. On the return date, all the parties' Advocates were in attendance and the Defendants' Advocates requested for an adjournment on the basis that they have just been retained. I granted the application for an adjournment on condition that the parties file herein their respective Affidavits and written arguments within a specified period, upon which I would proceed to render my Ruling.
- 2.5 None of the parties complied with my directives and I have now proceeded to render the Ruling based on the Affidavit in Support filed herein.

3 THE LAW

- 3.1 I must stress at the outset that an injunction is a remedy that should only be granted if the applicant has a substantive cause of action. It is dependent upon there being a pre-existing cause of action against the Defendant arising out of an invasion, actual or threatened, of a legal or equitable right of the Applicant.
- 3.2 The Plaintiffs have made this application pursuant to **Order XXVII, Rule 4** of **The High Court Rules**¹ as read with **Order 29, Rule 1** of **The Rules of the Supreme Court**², which provides the manner in which an application for an injunction may be made. **Order XXVII, Rule 4** of **The High Court Rules**¹ provides as follows: -

"In any suit for restraining the defendant from the committal of any breach of contract or other injury, and whether the same be accompanied by any claim for damages or not, it shall be lawful for the plaintiff, at any time after the commencement of the suit, and whether before or after judgment, to apply to the Court or a Judge for an injunction to restrain the defendant from the repetition or the continuance of the breach of contract or wrongful act complained of, or the committal of any breach of contract or injury of a like kind arising out of the same contract, or relating to the same property or right, and such injunction may be granted by the Court or a Judge on such terms as to the duration of the injunction, keeping an account, giving security or otherwise, as to the Court or a Judge shall seem reasonable and just:

Provided that any order for an injunction may be discharged, varied or set aside by the Court or a Judge, on application made thereto by any party dissatisfied with such order."

- 3.3 As can be seen from the above cited provision of the law, this Court is empowered to grant an injunction where it is satisfied that it is necessary for the protection of the Plaintiffs from repetitive and wrongful acts complained of. In resolving whether the grant of an injunction herein is necessary or not, I have considered the three basic principles of law when a Court can grant an injunction, which 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.

3.4 In the matter of **Zambia State Insurance Corporation Limited vs. Dennis Mulope Mulikelela**¹, 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)

3.5 The case of **Shell & BP Ltd vs. Conidaris & Others**², is one of the leading authorities on injunctions, 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)

- 3.6 In the case of ***Hondling Xing Xing Building Company Limited vs. ZamCapital Enterprises Limited***³, Matibini SC. J., as he then was, 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." (Court's emphasis)

4 ANALYSIS AND FINDINGS

- 4.1 Before I proceed to determine the application before me, I wish to point out that the Defendants did not file any arguments to oppose the application.
- 4.2 I have carefully considered the Application by the Plaintiffs, the Affidavit evidence before me and even the exhibits which I found to be of great assistance to me in guiding me on the issues raised.
- 4.3 Being guided by the principles espoused in the cases cited above, I have also perused the pleadings on record. It is clear from the Affidavit evidence and exhibits attached thereto that the Defendants are alleged to have prevented the Plaintiffs from accessing Kulima Tower Bus Station where the Plaintiffs operate from. Further, the Defendants are alleged to be unlawfully collecting levies from the Plaintiffs. The Defendants have not shown proof

of any authority from any government agency allowing them to exercise any rights over Kulima Tower Bus Station. For all intents and purposes, bus stations are administered by City Councils and only these government agencies can restrict or prescribe entry and levies that are to be collected.

- 4.4 Looking at the Statement of Claim and considering the reliefs sought by the Plaintiffs, I have no doubt that there is a serious question to be tried herein. In my view, the Plaintiffs have shown that they have a clear right of relief and that they have a good arguable claim to the interests that they seek to protect. They have also shown that there is a chance of them succeeding at the main trial. The Plaintiffs, or any other citizen for that matter, are entitled to seek relief against being denied access to public bus stations by fellow citizens and the denial of such access attracts a presumption of irreparable loss.
- 4.5 I must state that it is not part of the Court's function at this stage of the litigation to try to resolve conflicts of evidence on Affidavit as to the facts on which the claims of either party may ultimately depend, or decide difficult questions of law which call for detailed argument, and mature considerations.
- 4.6 I must further state that an Injunction is an equitable remedy and it is in the discretion of this Court, to grant an interlocutory injunction or not. If granted, the object

would be to keep things *status quo* until the question at issue between the parties can be determined. I am mindful that the discretion has to be exercised judicially.

- 4.7 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***⁴, 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. This was also the holding in the case of ***American Cyanamid Company vs. Ethicon Limited***⁵, 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*. Being guided accordingly, I considered whether the balance of convenience tilts in favour of the Plaintiffs or Defendants and found that the balance of

convenience lies heavily in favour of my granting the injunction sought.

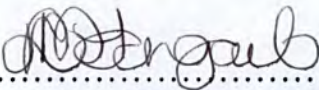
4.8 In addition to what I have stated in paragraph 4.5, this is a matter in which detailed evidence and arguments regarding the rights of the parties would be presented at trial, but in the meantime the Plaintiffs' application for an interim injunction is granted and the Defendants, whether by themselves or by their servants or agents or whosoever are restrained from blocking the Plaintiffs access to Kulima Tower Bus Station, collecting levies from the Plaintiffs and hindering the operations of the Plaintiffs at Kulima Tower Bus Station.

5 CONCLUSION

5.1 For the foregoing reasons and having given due consideration to the Affidavit evidence on record, I find that this is a case where it would be proper for this Court to grant an interim injunction as claimed by the Plaintiffs.

5.2 Accordingly, the application is granted with costs to the Plaintiffs, to be taxed in default of agreement.

Delivered at Lusaka on 3rd March, 2020.


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