IN THE HIGH COURT FOR ZAMBIA **2022/HP/0801**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

BETWEEN:

NEW CUMM MOTORS LIMITED **PLAINTIFF**

AND

LUSAKA CITY COUNCIL **1ST DEFENDANT**
MIDLANDS BREWERIES (PVT) LIMITED **2ND DEFENDANT**

BEFORE THE HONOURABLE MRS. JUSTICE M.C KOMBE

For the Plaintiff: *Mr. W. Mwenya - Messrs. Lukona Chambers.*

For the 1st Defendant: *Mr. A. Nsama - In House Counsel- Lusaka City Council*

For the 2nd Defendant: *Mr. F. Besa -Messrs. Friday Besa & Associates.*

RULING

Cases referred to:

1. **Edward Jack Shamwana v. Levy Mwanawasa (1994) Z.R. 93.**
2. **American Cyanamid Company v. Ethicon Limited (1975) AC 396.**
3. **Hilary Bernard Mukosa v. Michael Ronaldson (1993-1994) Z.R. 26.**
4. **Harton Ndove v. Zambia Educational Company (1980) Z.R.104.**
5. **Shell and BP (Z) Limited v. Conidaris and others (1975) Z.R. 174.**

6. **Ahmed Abad v. Turning and Metals Limited (1975) Z.R. 174.**
7. **Zimco Properties Limited v. Lapco Limited (1988-1989) Z.R 92.**
8. **Societe Françoise d'Applications Commerciales et Industrielles S.A.R.L. v. Electronic Concepts Limited (1976) 1 W.L.R. 51.**
9. **Shepard Homes Limited v. Sandham (1971) CH. 340.**
10. **Bates v. Lord Hailsham of St. Marylebone and Others (1972) 1. W.L.R. 1373.**

Legislation and other material referred to:

1. **The High Court Rules, Chapter, 27 of the Laws of Zambia.**
2. **The Rules of the Supreme Court (RSC-White Book) 1999 Edition.**
3. **Halsbury Laws of England Volume 24, Fourth Edition.**
4. **Iain S. Gold rein, K.H.P. Wilkinson and M. Kershaw: Commercial Litigation: Pre-emptive Remedies, London, and Sweet & Maxwell 1997.**
5. **Matibini P, Zambian Civil Procedure Commentary and Cases Volume 1, South Africa, LexisNexis, 2017.**

This is a ruling on the Plaintiff's application for an Order of interim injunction. The application is made pursuant to Order 27 of the High Court Rules Chapter 27 of the Laws of Zambia and Order 29 rule 1 of the Rules of the Supreme Court of England, 1999 Edition.

By this Order, the Plaintiff seeks to stop, restrain and refrain the 2nd Defendant from blocking access points into the service lane on the

eastern side of the Plaintiff's premises pending determination of this matter.

The application is supported by an affidavit deposed to by **PAUL MARCEL MONGE,** the proprietor and Managing Director of the Plaintiff Company.

He deposed that the 2nd Defendant's premises known as Stand No. 37875 carrying out a business as a brewery were next to the Plaintiff's and shared a common service lane at the backyard which was under the authority and jurisdiction of the 1st Defendant in so far as was known to the Plaintiff.

The said service lane was situated on the eastern side of the two Companies running from north to south and shared by all the premises that were on Stand No.10523(now Stand No. 1443328/1) to Stand No. 11794 along Lumumba Road and Stand Nos. 10535 to 10543 in the City and Province of Lusaka.

The service lane was under the control and management of the 1st Defendant and that it contained a natural flow of waste and rain water. There were also ZESCO overhead cables and telephone communication cables that took care of the natural flow of water in that part of the Light Industrial Area. It was also deposed that the 1st

Defendant had a mandate under the law to maintain drains including the service lane.

The deponent further deposed that the predecessor to the Plaintiff Company, Paul Marcel Monge trading as New Cumm Motors took possession of Stand No. 10523 in the year 1988 and the service lane in question had been observed and maintained by the 1st Defendant in accordance with the statutory function. Stand No. 10523 for the Plaintiff was extended and re-numbered as Stand No. 1443328/1.

At no time was the Plaintiff informed by the 1st Defendant that the service lane had been re-planned for other use other than that of a service lane.

On or about the year 2017, without the consent of the Plaintiff the 2nd Defendant blocked the natural flow of waste and rain water from the Plaintiff's premises onto the service lane resulting in untold misery and damage to the Plaintiff's premises. Copies of the photographs taken on the site were exhibited and marked **"PMM4."**

When the Plaintiff inquired with the 2nd Defendant why the service lane had been blocked, the Plaintiff came to learn that the service lane had been offered to the 2nd Defendant by the recommendation of the 1st Defendant and had formed part and parcel of the 2nd

Defendant's land which bordered the Plaintiff's land on the eastern side and for which a Certificate of Title had been issued to the 2nd Defendant. Copies of documents in support were exhibited and marked **"PMM5."**

It was deposed that the 2nd Defendant also erected a wall fence along the section of the service lane through which waste and rain water from the Plaintiff's premises joined the lane and the rain water from the roof top of the storage containers resulted in back flush of rain water into the Plaintiff's premises. Copies of the photographs taken on site were exhibited and marked **"PMM4."**

The 2nd Defendant also built a roof over its boiler machines which discharged rain water on the premises of the Plaintiff. Despite raising a complaint over the issue, the 2nd Defendant failed and neglected to control the discharge of the water onto the Plaintiff in addition to blocking the access points for discharge of waste and rain water.

The Plaintiff engaged the 1st Defendant as a Planning Authority for Lusaka City and the authority responsible for maintaining drainages. That despite the meetings and visits conducted by officials, the 1st Defendant had not taken any action to remedy the situation. Copies of letters were exhibited and collectively marked **"PMM6."**

permission from anyone before re-planning the land that was within its jurisdiction.

The deponent added that it was not the 1st Defendant's responsibility to deal with the flooding of the Plaintiff's property as there was already a drainage in front of the Plaintiff's property that could be used for the same cause. Further, that the 1st Defendant was not in breach of any statutory function.

That the Plaintiff was seeking an injunction for actions that had already been done by the 1st and 2nd Defendant and the application was therefore misconceived with nothing to injunct.

The 2nd Defendant also opposed the application and filed an affidavit in opposition on 28th February, 2024, deposed to by **BATES NAMUYAMBA**, the Chairman of the 2nd Defendant Company.

He deposed that the land behind the Plaintiff and the 2nd Defendant's properties being referred to as a "service lane" was a mere strip of bare land at the back and not a drainage system as wrongly alleged by the Plaintiff. That the strip of land at the back did not even have an opening as it was fenced at the end and would therefore not take drainage anywhere. Further, that there was in front of the parties' properties a different area designated as drainage system.

Regarding the ZESCO cables, he deposed that they had since been buried underground in armored cables following the lawful allocation of part of the land to the 2nd Defendant by the Commissioner of Lands.

The deponent denied that the 2nd Defendant blocked the natural flow of waste and rain water from the Plaintiff's premises. The 2nd Defendant merely fenced off its property after it was offered by the Commissioner of Lands. That it was the Plaintiff's responsibility to sort out any drainage problems that could arise on its property.

The deponent further explained that the 2nd Defendant after realizing that the land behind its property did not belong to anyone, in full compliance with procedure on or around August 2012, it applied to the Director of City Planning of the 1st Defendant, an agent of the Commissioner of Lands for extension.

The Commissioner of Lands who had full and absolute authority to alienate land in Zambia issued an invitation to treat to the 2nd Defendant and upon the 2nd Defendant complying with the terms, it accepted the offer letter. A copy of the invitation to treat and letter of offer were exhibited and marked **"BN6."**

That the 2nd Defendant was the legal and beneficial owner of the land with all the full rights which included and not restricted to fencing off property and making adequate provision for drainage systems within the property.

He also explained that whilst the 2nd Defendant was not privy to the drainage and flooding conditions in the Plaintiff's property, the issue of flooding arising from rain water had not been caused by the 2nd Defendant's developments at its property. That all the properties in the parties' area experienced the same rain conditions and had built their own drainage lines including underground drainage facilities that took the rain water to the main designated drainage furrows constructed by the 1st Defendant.

That rather than build its own drainage system that would pass through its property and direct the rain water to the designated drainage furrows, the Plaintiff had unreasonably demanded that its drainage system should pass through the 2nd Defendant's property and potentially cause flooding to the 2nd Defendant's property.

The deponent also denied that its roof on the boiler caused flooding in the Plaintiff's premises.

It was deposed that the 2nd Defendant's activities and constructions at its property including the portion which it acquired after the plot was extended had been done in accordance with the law after all legal and procedural requirements were complied with in extending the plot and acquiring title for the same.

The deponent denied that the Plaintiff had suffered any damage or loss. That the purported flooding if at all was an act of God that could not be blamed on the Defendants.

Further, that the Plaintiff was not entitled to have the service lane reinstated as the said land had already been given to the 2nd Defendant by the Commissioner of Lands.

That the application for an injunction was not only without merit or without clear right to the reliefs being sought and what was to be restrained as the land had already been given to the 2nd Defendant who had developed it. Hence there was nothing to injunct.

The Plaintiff filed an affidavit in reply to the 1st Defendant's affidavit in opposition deposed to by **PAUL MARCEL MONGE.**

He deposed that the service lane had been in existence until the 2nd Defendant encroached on it.

At no time did the 1st Defendant re-plan the area depicted on exhibit "PMM1" resulting in the revision of the site plan for the affected area declaring the service lane as a disused service lane. Further that the 1st Defendant had not produced any documents to support the passing of any Council Resolution decommissioning the said service lane.

It was deposed that the 1st Defendant could not unilaterally change the use of a public service lane without informing the members of the public.

That the actions by the 1st and 2nd Defendants to block the service lane should not be allowed as they amounted to creation of a nuisance and serious health hazard.

In relation to the affidavit in opposition filed by the 2nd Defendant, the Plaintiff filed an affidavit in reply in which the deponent deposed that the service lane had always been designated as such and among the services it provided was for waste and rain water and drainage. Other services included facilitation of ZESCO electricity cables for the supply of properties bordering the service lane and telephone lines.

He deposed that the grant of the Certificate of Title to the 2nd Defendant extending into the service lane was done deliberately as

the 1st and 2nd Defendants were fully aware of the existence of the service lane at the time the 2nd Defendant applied for the land. That the Certificate of Title relied on even showed the existence of the service lane as still existing on both sides of the said stand except on the section the subject of these proceedings.

Further, that the extension of the said stand resulted into the cutting of the service lane into two parts which were clearly visible on the survey diagram. That if it was decommissioned as alleged, the survey diagram could not have indicated the existence of the (service) lane at the time of approval of the survey diagram which should have been supported by a Council Resolution and endorsed on the Deeds Register.

That there was breach by the 1st Defendant in allocating a portion of the service lane to the 2nd Defendant which had resulted in the blockage of waste and rain water into the service lane. Therefore, the grant of the extension to the 2nd Defendant by the 1st Defendant was marked with irregularities.

At the hearing of the application, learned counsel for the Plaintiff, Mr. W. Mwenya relied on the affidavit in support filed on 16th January, 2024, and the affidavits in reply filed on 25th March, 2024. Reliance

was also placed on the skeleton arguments filed on the same date. These were augmented with verbal submissions in reply.

Learned counsel for the 1st Defendant, Mr. A. Nsama also solely relied on the affidavit in opposition filed on 13th March, 2024.

Learned counsel for the 2nd Defendant, Mr. F. Besa relied on the affidavit in opposition and the skeleton arguments filed on 28th February, 2024. He augmented the arguments with verbal submissions.

I shall not replicate the submissions but will be making reference to them as and when it is necessary.

By this application, I have been called upon to determine whether the Plaintiff is entitled to an order of interim injunction to stop, restrain and refrain the 2nd Defendant from blocking access points into the service lane on the eastern side of the Plaintiff's premises.

In doing so, I have carefully considered the caution given by Ngulube J (as he then was) in the case of **Edward Jack Shamwana v. Levy Mwanawasa** (1). This caution is that I should in no way pre-empt the decision of the issues which are to be decided on the merits and the evidence at the trial of the action.

The test to be applied when considering whether or not an injunction should be granted remains that laid down by the House of Lords in the seminal case of **American Cyanamid Company v. Ethicon Limited** [2]. This case sets out a series of questions which should guide the court in making a determination. These are:

1. Is there a serious question to be tried?
2. Would damages be adequate?
3. Where does the balance of convenience lie?

However, I am mindful to the fact that the principles established in the ***American Cyanamid*** case are of general application and must not be treated as a statutory definition. This is because it is possible to grant or refuse an interim injunction without applying the ***American Cyanamid*** guidelines.

In following the ***American Cyanamid*** guidelines, the first question I should consider therefore is whether or not the Plaintiff has raised a serious question to be determined at trial. This proposition comes down to the requirement that the claim must not be frivolous or vexatious. This is in line with the holding by the Supreme Court in the case of **Hilary Bernard Mukosa v. Michael Ronaldson** [3] where it was held that:

> **"An injunction would only be granted to a plaintiff who established that he had a good and arguable claim to the right which he sought to protect."**

Further, in the High Court, Chirwa J, as he then was in the case of **Harton Ndove v. Zambia Educational Company** [4] held that:

> **"Before granting an interlocutory injunction it must be shown that there is a serious dispute between the parties and the plaintiff must show on the material before court that he has any real prospect of succeeding at trial."**

In view of the above principles, for the application to succeed, the Plaintiff must demonstrate that there is a serious question to be tried and it has a good and arguable claim to the right it seeks to protect.

I have perused the writ of summons, statement of claim and the defence and counter claim filed. I have examined the endorsement in the statement of claim and the affidavit evidence adduced by all the parties together with the exhibits.

The Plaintiff's contention is that it shared a common service lane with the 2nd Defendant at the backyards which was under the authority and jurisdiction of the 1st Defendant. The 1st Defendant without informing the Plaintiff re-planned the service lane for other use other

than that of a service lane. On or about the year 2017 without the consent of the Plaintiff, the 2nd Defendant blocked the natural flow of waste and rain water from the Plaintiff's premises onto the service lane resulting in untold misery, flooding and damage to the Plaintiff's premises.

The 1st Defendant on the other hand has argued that the alleged service lane was not a service lane *per se* as it was in disuse at the time it was offered to the 2nd Defendant by the 1st Defendant. It is also argued that the 1st Defendant did not need consent of the Plaintiff to re-plan a disused service lane and it was not the 1st Defendant's responsibility to deal with the flooding of the Plaintiff's property as there was already a drainage in front of the Plaintiff's property that could be used for the same cause.

The gist of the 2nd Defendant's argument is that it denies the assertion that it blocked the natural flow of waste and rain water from the Plaintiff's premises as it merely fenced off its property after it was offered by the Commissioner of Lands.

It is argued that after realizing that the land behind its property did not belong to anyone, in full compliance with procedure on or around August, 2012, it applied to the Director of City Planning of the 1st

Defendant. The Commissioner of Lands with full and absolute authority to alienate land in Zambia issued an invitation to treat to the 2nd Defendant and upon complying with the terms, it accepted the offer letter.

The 2nd Defendant contends that it is the legal and beneficial owner of the land with all the full rights which includes and not restricted to fencing off property and making adequate provision for drainage systems within the property.

From the foregoing, it is clear that the Plaintiff challenges the 1st Defendant's decision to re-plan the alleged service lane and recommendation to offer it to the 2nd Defendant. The Plaintiff contends that the 2nd Defendant's fencing off and activities in the land had now blocked the natural flow of waste and rain water from the Plaintiff's premises. However, a determination whether the Plaintiff is entitled to the reliefs that he seeks can only be made after examining in a more detailed way the evidence and exhibits relied upon by both parties at the trial of this matter.

In view of the above, I find in line with the ***Harton Ndove*** case that there is a serious question to be tried by the Court.

That notwithstanding, the mere fact that there is a serious question to be tried is not enough. In order to succeed, the Plaintiff must satisfy the court that an injunction is necessary to protect it from irreparable damage. Thus, if the Plaintiff can be fully compensated by an award of damages, no injunction should be granted. This consideration is made in the light of what was stated by Lord Diplock in the ***American Cyanamid*** case that:

> **"If damages in the measure recoverable at common law would be adequate remedy and the Defendant would be in the financial position to pay them, no interim injunction should normally be granted."**

Further, paragraph 955 of the Halsbury's Laws of England Volume 24, Fourth Edition provides that:

> **"The Plaintiff must also as a rule be able to show that an injunction until the hearing is necessary to protect him against irreparable injury; mere inconvenience is not enough."**

According to the **Shell and BP (Z) Limited v. Conidaris and others** [5] case irreparable injury means:

> **"Injury which is substantial and can never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired."**

In this regard, an injunction will not be granted where damages would be an adequate remedy to the injury complained of in the event that the Plaintiff later succeeds in the main action.

According to paragraph 29/L/5 of the Rules of the Supreme Court, where there is a doubt as to the adequacy of the respective remedies in damages then the question of balance of convenience arises.

On this question, the Plaintiff's position is that the if the injunction is not granted, the Plaintiff will suffer irreparable damage that cannot be atoned for in damages considering that the dispute involves a unique subject matter, which is land.

The 2nd Defendant on the other hand argues that the Plaintiff has not demonstrated what irreparable injury it will suffer if the injunction is not granted and is even seeking damages including special damages in its relief. It is contended that this shows that damages would be an adequate remedy in the unlikely event that the Plaintiff succeeds in its claim.

I have carefully considered the respective arguments advanced by the parties. The Plaintiff in its affidavit deposed that the flooding caused by the blockage had resulted in a number of the Plaintiff's equipment being damaged due to corrosion and exposure to waste water and the

floor for the workshops had been damaged due to stagnant water. It is contended that the Plaintiff had also suffered loss of business during the shutdown due to flooding. That it further incurred costs in addressing the effects of the flooding occasioned by the blockage of the service lane.

From the foregoing, I am of the considered view that if the Plaintiff were to succeed after the determination of this matter, the injury which it would suffer would not be substantial to the extent that it can never be atoned for by damages. I say this because the injunctive relief sought is to stop, restrain and refrain the 2nd Defendant from blocking access points into the service lane in the eastern side of the Plaintiff's premises.

I form the view that if the Plaintiff were to succeed in its claim, the damage caused to its equipment and that of its clients due to corrosion and exposure to water is not one that cannot be atoned for in damages. This applies to the loss of business that the Plaintiff will have suffered and the costs incurred in mitigating the effects of the flooding. I am fortified by the reliefs that the Plaintiff seeks as shown in paragraphs (vii) to (xi) of the writ of summons and statement of claim that they are monetary in nature.

I am therefore inclined to agree with the 2nd Defendant's assertion that the Plaintiff is seeking special damages which entails that the damage occasioned can easily be quantified and compensated for by an award of damages.

Force is lent from the guidance given by the Supreme Court in the case of **Ahmed Abad v. Turning and Metals Limited** (6) that an injunction is inappropriate when damages would be an adequate remedy.

As I have already alluded to, paragraph 29/L/5 of the Rules of the Supreme Court states that where there is a doubt as to the adequacy of the respective remedies in damages then the question of balance of convenience arises.

Additionally, in the case of **Zimco Properties Limited v. Lapco Limited** (7) which has been cited by counsel for the Defendant, the Supreme Court made it clear when it held that:

> **"We must make it clear that the question of balance of convenience between the parties only arises if the harm done will be irreparable and damages will not suffice to recompense the plaintiff for any harm which may be suffered as a result of the actions of the defendant which it is sought to restrain. It is therefore**

inappropriate in this case to discuss the question of balance of convenience. It is clear to us that if the plaintiff is successful in its action it will be adequately compensated by an award of damages."

It is apparent from the foregoing that the balance of convenience only arises where there is a doubt as to adequacy of damages or if the harm done will be irreparable. Seeing that I have found that the Plaintiff is seeking special damages which entails that the damage occasioned can easily be quantified and compensated for by an award of damages should it succeed at trial, I find that it is inappropriate on the facts of this case to discuss the question of balance of convenience.

In addition to what I have stated above, I have considered that one of the factors that affects the Court's discretion when considering an application for interlocutory injunction is delay. The learned authors of Commercial Litigation: Pre-emptive Remedies at page 70, therefore state that:

"As with all equitable relief, delay is a relevant factor in interlocutory proceedings for injunctive relief: vigilantibus non dormientibus jura subcenient- a plaintiff should not sleep on his rights."

Matibini P. the learned author of the recently published book entitled Zambian Civil Procedure: Commentary and Cases Volume 1 also states at page 770 that:

> **"Since the power to grant or refuse to grant an interim injunction is discretionary and equitable, it may be refused even if all the conditions set out in the American Cyanamid case are satisfied for instance, it may be refused on the ground of delay..."**

What I have highlighted above is in line with the Latin maxim that *'Equity aids the vigilant not those who slumber on their rights.* This is the attitude that has been taken by most English courts as was stated by Oliver J. in his obiter dicta in the case of **Societe Françoise d'Applications Commerciales et Industrielles S.A.R.L. v Electronic Concepts Limited** [8] when he observed that:

> **"He drew my attention to a number of cases supporting the well-known rule that delay in launching proceedings for interlocutory relief may be fatal and in particular to Kentex Chemicals Inc. vs. Kenitex Textured Coating Ltd [1965] 2 F.S.R. 109 where a delay of some three months was considered fatal and a similar case of Bravingtons Ltd v Barrington Tennant [1957] R.P.C 183 where again there was an unexplained three months' delay which**

was considered fatal..." (Underline mine for emphasis only).

In this regard, the case of **Shepard Homes Limited v. Sandham** [9] is persuasive. In that case the defendant was a purchaser of a plot of land on a large housing estate on which he built his home. In breach of a restrictive covenant (designed to maintain the open-planned concept) the defendant erected a garden fence. His motive was to restrain the repeated incursions of sheep. The defendant did not heed a letter from the Plaintiff's solicitor dated September 11, 1969 to remove the fence. This prompted the plaintiff to launch proceedings on October 23, 1969. But then the plaintiff did nothing until he gave notice of motion for a mandatory interlocutory injunction on February 25, 1970. Megarry J, held i*nter alia* that:

> **"Furthermore, the status quo for any reasonable period prior to the service of the notice of motion is that of the defendant's fence being in situ, so that the injunction sought will disturb rather than preserve anything that can fairly be called the status quo."**

Therefore, the Judge refused a mandatory interlocutory injunction *inter alia* by reason of the Plaintiff's delay for five months before moving to have pulled down the garden fence erected in breach of a restrictive covenant.

In the present case, the Plaintiff deposed in paragraphs 18 and 19 of the affidavit in support that the 2nd Defendant on or about the year 2017 without the consent of the Plaintiff blocked the natural flow of waste and rain water from the Plaintiff's premises onto the service lane resulting in untold misery and damage to the property on the Plaintiff's premises. That when the Plaintiff inquired, it came to know that the 2nd Defendant had in possession a Certificate of Title which included the part of land of the service lane which bordered the Plaintiff's land on the eastern side.

It is further deposed that the 2nd Defendant not only blocked the natural flow of waste and rain water from the Plaintiff's premises to drain into the service lane but also built a wall fence along the section of the service lane through which waste and rain water from the Plaintiff's premises joined the service lane.

Following these actions taken by the 2nd Defendant, the Plaintiff engaged the 1st Defendant as a Planning Authority for Lusaka City and responsible for maintaining drainages. That despite the meetings and site visits conducted by officials from the 1st Defendant, the 1st Defendant had not taken any action to remedy the situation as shown by exhibits marked **'PMM6'.**

Given the foregoing, it is clear that the Plaintiff knew about the actions allegedly taken by the 2nd Defendant as far back as 2017/2018 as shown in paragraph 18 and also exhibits marked **'PMM6'** because it had engaged the 1st Defendant to remedy the situation. The view that I hold therefore is that the Plaintiff has not resorted to this Court promptly to seek this equitable relief for an order of injunction to restrain the 2nd Defendant from blocking access points into the service lane on the eastern side of its property. If the Plaintiff wished to invoke this Courts intervention and protection, it should have done so at the time when it alleges the problems started, that is in 2017/2018. The Plaintiff did not do that.

In this regard, I fully subscribe to what Megarry J. stated in the case **Bates v. Lord Halisham of St Marylebone and others** (10) that:

> **"An application made at 2p.m for an injunction to restrain certain acts which may take place at 4.30 p.m. on the same day is an application made at a desperately late hour....an injunction is a serious matter and must be treated seriously. If there is a plaintiff who has known about a proposal for 10 weeks in general terms and for nearly four weeks in detail and he wants an injunction to prevent the effect being given to it at a meeting of which he has known for well over a fortnight, he must have a most cogent explanation if he is to obtain his injunction**

on an ex parte application made two and a half hours before the meeting is due to begin."

Given the foregoing, I am of the view that making an application in 2022 to restrain the 2nd Defendant from blocking the access points is an application made at a late hour. This is because the delay in launching proceedings against the Defendants has resulted in the 2nd Defendant not only taking possession of its property but also commencing construction works on the property. No cogent reason why there has been a delay has been proffered.

In this regard, even if I was to consider the contents of paragraphs 26 and 27 of the affidavit in support that it engaged the 1st Defendant to redress the situation but it abrogated its responsibility, it is clear that the request was not attended to by the 1st Defendant. That notwithstanding, the Plaintiff did not take any action at that stage to seek the Courts protection.

The delay therefore fortifies the argument by the 2nd Defendant which I agree with that the Plaintiff cannot at this stage come to Court and seek a prohibitory injunction restraining it from doing something that has already been done. In short, there is nothing to injunct. In my view, the situation would have been different if the Plaintiff had

sought a mandatory injunction directing the 2nd Defendant to undo certain acts. However, that is not the position.

On this score as well, I find that the facts of the case do not warrant an injunction being granted.

The net result of my findings based on the fundamental principles of injunction law, is that the Plaintiff has failed to make out its case for the exercise of my discretion to grant an interim injunction in its favour. I therefore decline to grant the order sought. The application is dismissed but I make no order as to costs.

DELIVERED AT LUSAKA THIS 22ND DAY OF APRIL, 2024

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
22 APR 2024
M.C. KOMBE, J
P.O. BOX 50067, LUSAKA

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M.C. KOMBE

JUDGE