

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

2023/HP/ 2152



BETWEEN:

KASHIKOTO CONSERVANCY LIMITED

PLAINTIFF

AND

ANDREW BALDRY

DEFENDANT

Before:

The Hon. Mr. Justice Charles Zulu.

For the Plaintiff:

Ms. D. Nalishuwa and Mr. I. Mung'omba
of Musa Dudhia and Company.

For the Defendant:

Mr. H. B. Hantumbu of Muleza Mwiimbu
and Company.

R U L I N G

Cases referred to:

- 1. Turnkey Properties v Lusaka West Development Company & Another (1984) Z.R. 84***
- 2. Gateway Services Station Limited v Engen Petroleum Zambia (SCZ Appeal No. 12, 2003)***
- 3. John Musuaya Ngalula v Habib Industries Limited (2010) Z.R. Vol. 2, 162.***
- 4. Shepard Homes Limited v Sandlam (1970) 3. All. E.R 402.***
- 5. Heinrich Hotels Limited v Kitwe City Council and Others (2011) Z.R. Vol1, 155.***

Legislation & other materials referred to:

- 1. The High Court Rules Chapter 27 of the Laws of Zambia.***
- 2. The Land (Perpetual Succession) Act Chapter 186 of the laws of Zambia.***
- 3. Halsbury's Law of England third Edition Vol. 21 paragraph 766.***

1.0 INTRODUCTION

1.1 This ruling is in respect of an application by the Plaintiff, Kashikoto Conservancy Limited. The application is dated November 30, 2023, and by this application, the Plaintiff is seeking for an order of interlocutory injunction, to restrain the Defendant, Andrew Baldry from trespassing on Farm No. 10415, situate in Mumbwa District, and to order the said Defendant to remove all his properties from the said farm, dumped at the said Ranch. The application was made pursuant to Order XXVII rule 4 of the **High Court Rules Chapter 27 of the Laws of Zambia.**

2.0 BACKGROUND

2.1 The Plaintiff, took out a writ of summons and statement of claim dated November 30, 2023, against the Defendant, seeking the following reliefs:

- i. a declaration that the Defendant has no right to enter upon Farm No. 10415, Mumbwa;*
- ii. a declaration that the Defendant has no right to keep his property on Farm No. 10415, Mumbwa;*
- iii. an Order that the Defendant does forthwith remove all of his property from Farm No. 10415, Mumbwa;*
- iv. an injunction to restrain the Defendant whether by himself or by his servants or agents or otherwise howsoever from entering on Farm No. 10415 Mumbwa and keeping his property thereon;*
- v. damages for trespass on Farm No. 10415d, Mumbwa;*
- vi. further or other reliefs as the Court may deem fit; and*
- vii. costs of and incidental to this action.*

- 2.2 The land in issue, the subject of the alleged trespass is Farm No. 10413 Mumbwa District 'owned' by Kaindu Natural Resources Trust (KNRT) located in the chiefdom of Chief Kaindu, Mumbwa District. The Defendant is thought to be a professional hunting operator, under the auspice of a company called Royal Kafue Limited (RKL).
- 2.3 It is alleged by the Plaintiff in its statement of claim that in February, 2021, the Plaintiff entered into a Conservation Collaboration Agreement and Lease Agreement with the Registered Trustees of KNRT for the demise of 15,000 hectares of Farm No. 10415, Mumbwa, otherwise called the "Demised Game Ranch". That the Plaintiff took up possession of the land after expiration of the lease, Royal Kafue Limited had with KNRT.
- 2.4 It was alleged that on November 28, 2023, the Defendant trespassed on Farm 10415 Mumbwa. That when the Defendant was questioned concerning his trespass. In response, it was alleged that the Mumbwa Subordinate Court in a criminal matter had ordered that certain properties allegedly stolen from Kafue Royal Limited be returned and restored at the location they were stolen from, namely the subject property.
- 2.5 However, the position taken by the Plaintiff is that there was no such directive by the lower court; to the effect that the stolen property be returned and placed at the Demised Game Ranch. That when the Defendant was advised to vacate from the Demised Game Ranch, the Defendant remained adamant. It

was alleged that the Defendant vandalized the gate and caused damage to the Game Ranch, and refused to take back his properties dumped on the Demised Game Ranch.

- 2.6 In his defence, the Defendant stated that the Plaintiff violently took over the Game Ranch from Royal Kafue Limited, using one Boniface Chisoshi and another, and in the process, property belonging to Royal Kafue Limited was either stolen or burnt by Boniface Chisoshi. That contrary to the allegation that the lease, Royal Kafue Limited had with KNRT had expired in 2020, the same was for a duration of *Ninety-Nine* (99) years from 2010.
- 2.7 And that the lease executed between the Plaintiff and some 'trustees' of KNRT was defective for want of authority. Allegations of trespass were denied.

3.0 AFFIDAVIT EVIDENCE

- 3.1 An affidavit in support of the application was deposed to by Andre Van Eeden, a Director in the Plaintiff Company. He recounted facts stated in the statement of claim, as above summarized. Suffice to add that, he restated that the order by the Subordinate Court did not explicitly state that the properties thereof were to be left at the Demised Game Ranch.
- 3.2 He added that the said properties were previously stored at a community shed. He did not fathom any logic for the Defendant to insist on keeping his property at the Plaintiff's land. It was alleged that the keeping of the said property at the subject land was a ploy by the Defendant to have continued access to the Demised Game Ranch.

- 3.3 The deponent explicated that the Plaintiff had invested in the Demised Game Ranch, and given the Defendant's trespass, it was feared that the Defendant's act(s) will prevent the Plaintiff from properly carrying out its conservation activities in the Demised Game Ranch.
- 3.4 An affidavit in opposition was deposed to by the Defendant. Equally, facts averred in his defence were restated. Additionally, regarding the criminal matter that was before the Subordinate Court and on appeal to the High Court, he stated that, the Court directed that the stolen items belonging to Kafue Royal Limited be returned to the Game Ranch.
- 3.5 He said the Plaintiff's demand to remove the property would be in contempt of the court order. He stated that the court order was enforced in the company of four Zambia Police Officers. He denied trespassing on the property and stealing the Plaintiff's camera. He said when the visitation was done at the Game Ranch, he was ordered to remain in the car. And that entry into the Game Ranch was accessed with approval of the Plaintiff's Manager, Henry Kakoma upon being shown the court order.
- 3.6 In an affidavit in reply, Andre Van Eeden restated that after termination of the lease between Royal Kafue Limited and KNRT, Royal Kafue Limited vacated the Demised Game Ranch, as confirmed by the Certificate of Occupation dated February, 2023. And that the lease the Plaintiff has with KNRT was valid unless otherwise ordered by the Court.
- 3.7 He further stated that the criminal matter in the Subordinate Court dealt with a case of theft, and was not about confirming

or not the legitimate trustees of KNRT. He added that the Demised Game Ranch was not mentioned in the order as the place to which the said items were to be returned. He recounted as follows:

That upon their arrival at the Demised Game Ranch, the Defendant and the accompanying police officers were instructed to use the Chipunda Gate, which is located to the east of the Demised Game Ranch. Instead, the Defendant and the accompanying police officers forced their way into a private gate and used a private road to enter the Demised Game Ranch.

3.8 It was maintained that the Defendant trespassed.

4.0 THE PARTIES' ARGUMENTS

4.1 The parties through their respective Counsel tendered their submissions for and against the application. I will not labor to summarize the arguments seriatim, but I have considered them in my determination, and I will make reference to some salient features of the arguments.

5.0 DETERMINATION

5.1 I have carefully considered the facts in issue, and the respective arguments by Counsel. I wish to state that the parties hereto made reference to Cause No. 2021/HP/121, which is before me and pending judgment. The case concerns leadership wrangles involving members of KNRT, between two factions as to which faction was legitimately elected as trustees of KNRT, to run the affairs of KNRT, a corporate body registered under the **Land (Perpetual Succession) Act Chapter 186 of the laws of Zambia.**

5.2 The Plaintiff joined Cause No. 2021/HP/121 as an intervener, apparently on the side of the Defendants, led by Boniface Chisoshi with whom the lease agreement relied on by the Plaintiff was executed with, while Royal Kafue Limited is thought to be on the side of the Plaintiffs led by Danwell Chibunda and nine others.

5.3 I should further add that, under Cause No. 2021/HP/121, the Plaintiffs sought an injunction to restrain the Defendants from running the affairs of KNRT. The application was dismissed, and in dismissing the application I had this to say:

The object of granting an interlocutory injunction is to preserve the status quo. As rightly noted by the Defendant's Counsel, the question that begs is, what is the status quo in the present case? The Plaintiff's Counsel suggested that the status quo was in favour of the Plaintiffs. The meaning of the word, status quo is: "the existing state of things" (see Dunhill (Alfred Ltd) v. Sunoptics (1978) F.S.R 337). The status quo at least from a de facto analysis as to who at present is in-charge of the Trust tilt the balance of convenience in favour of the Defendants, unless and until the matter is effectually and finally determined.

5.4 Notably, the Plaintiff's Counsel relied on this holding to reinforce their argument that their application in this matter is soundly tenable.

5.5 It was observed by the Plaintiff's Counsel that, the Defendant was illegally seeking to keep his property on a property demised to the Plaintiff by trustees of KNRT. According to Counsel, there was no reason for the Defendant to keep his property or that of Royal Kafue Limited on another person's property without consent.

5.6 The case of **Turnkey Properties v Lusaka West Development Company & Another⁽¹⁾** was vouched by the Plaintiff, wherein it was had:

An interlocutory injunction is appropriate for the preservation or restoration of a particular situation pending trial, but it cannot, in our considered view, be regarded as a device by which the applicant can attain or create new conditions, favourable only to himself, which tilt the balance of the contending interests in such a way he is able, or more likely to influence the final outcome by bringing about an alteration to the prevailing situation which may weaken the opponents' case and strengthen his own.

5.7 Equally, the Defendant's Counsel citing the above case contended that the Defendant entered the Game Ranch at the invitation of the Zambia Police who were enforcing a court order.

5.8 In determining this application, I tread carefully, so as to avoid making pre-judgments pronouncement, which pronouncements are only apt after final determination. Nevertheless, it is trite law that in order for the Court to grant an injunction, it is imperative to consider whether an applicant has a clear right to relief, and whether, if the injunction is not granted, the applicant will suffer irreparable harm (**Turnkey Properties⁽¹⁾**).

5.9 A clear right to relief should not only imply that there is a serious question to be tried at trial, but also whether, the facts relied on by the applicant, compellingly tilt the balance of justice in favour of granting the interlocutory injunction. In other words, and without prejudice to the final determination of the whole case, the court must *prima facie* assess the facts as they

appear, in terms of the applicant's real prospect of success at trial, and the prejudice to be suffered, if the injunction was not granted.

5.10 In the present case, the Plaintiff has demonstrated a measurable clear right to relief to warrant the grant of an interlocutory injunction, particularly that the Plaintiff is in possession of the subject land. The Plaintiff's possession of the land is said to emanate from the lease agreement between the Plaintiff and the supposed trustees of KNRT, in particular the Defendants under Cause No. 2021/HP/121. Therefore, the *status quo* in terms of preserving the quiet enjoyment of the property by the Plaintiff must be safe-guarded for now, unless otherwise adjudged at the end of the trial.

5.11 The court documents which the Defendant seeks to rely on do not in any sense ebb the Plaintiff's clear right to relief for an injunction so far established.

5.12 Likewise, there is no court order from elsewhere legally capable of dissuading this Court from granting the order sought.

5.13 While it is generally settled that an injunction will not be granted, if an award of damages is adequate, I agree with the Plaintiff's Counsel that in the present case, damages will not be an adequate remedy. It is considerably impractical to atone for adequate damages, if the Defendant is allowed to keep his property on the property exclusively occupied by the Plaintiff, especially that there is no court order invalidating the said lease agreement between the Plaintiff and KNRT.

5.14 The Plaintiff's Counsel was not amiss to cite the case of **Gateway Services Station Limited v Engen Petroleum Zambia**⁽²⁾ in which it was held that damages are inadequate if they are difficult to assess. This argument is tenable given the Plaintiff's nature of business; a project involving conservation of wild animals. Furthermore, this can be fortified by the holding in **John Musuyaya v Habib Industries Limited**⁽³⁾, in which it was held that in disputes relating to land, monetary compensation/damages tend to be inadequate.

5.15 A prohibitory injunction is tenable regarding the trespass and against the real risk of foreseeable trespass under the veil of monitoring the state of the said property dumped at the Demised Game Ranch.

5.16 The second angle of the application is whether a mandatory injunction is tenable to order the Defendant to remove the properties he left at the Game Ranch. In **Shepard Homes Limited v Saliam**⁽⁴⁾, Megarry J, had this to say:

Nevertheless, it is plain that in most circumstances a mandatory injunction is likely, other things being equal, to be more drastic in its effect than prohibitory injunction. At the trial of the action, the court will, of course, grant such injunctions as the justice of the case requires; be at the interlocutory stage when the final result of the case cannot be known and the court has to do the best it can, I think that the case has to be unusually strong and clear before a mandatory injunction will be granted,...

5.17 The above principle was upheld in the case of **Heinrich Hotels Limited v Kitwe City Council and Others**⁽⁵⁾, at 164 wherein Kaoma J, (as she then was) held:

In conclusion, having weighed the balance of convenience, as it were, I believe that this is one exceptional case in which withholding a mandatory injunction would in fact carry a risk of greater injustice.

5.18 As earlier stated, the Plaintiff is at present in exclusive possession of the land, and there is no court order interfering with that exclusivity and quiet enjoyment of the property. And if the order of injunction is denied, the *status quo* as regards possession of the land and its quiet enjoyment of the same by the Plaintiff will be jeopardized, thereby subjecting the Plaintiff to the real risk of being burdened with irreparable injury.

5.19 Therefore, the balance of justice requires the grant of an order to restrain the Defendant or his principal or agent from trespassing. Concomitantly, a mandatory injunction is grantable. In this case, it appears logical that the Defendant or his principal, as the case may be, should keep and secure his/their own properties at the place they have control, than to transfer the responsibility to an entity, to whom they have no legal affinity or relationship *inter se* creating legal obligations.

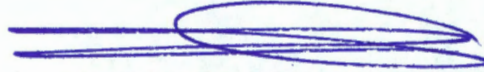
6.0 CONCLUSION

6.1 In the view of the foregoing, the application is granted as prayed. The Defendant whether by himself, his agent or principal is restrained from trespassing on Farm No. 10415 Mumbwa District, save reasonable entry is allowed for the purpose of removing the said properties he left at the said farm, under the supervision of the Plaintiff. It is also directed that the said

properties be removed from the Demised Game Ranch within 14 days from the date of this ruling.

6.2 The Application is granted with costs. And leave to appeal is granted.

DATED THE 9TH DAY OF MAY, 2024.



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THE HON. MR. JUSTICE CHARLES ZULU