

IN THE HIGH COURT FOR ZAMBIA
AT THE NDOLA DISTRICT REGISTRY
HOLDEN AT NDOLA
INDUSTRIAL/LABOUR DIVISION

IRC/ND/27/2016

BETWEEN:



LEVI CHIMFWEMBE (Suing in his capacity as
General Secretary on behalf
Mine Contractors and Allied
Workers Union of Zambia)

COMPLAINANT

AND

OFFSHORE LOGISTIX LIMITED

RESPONDENT

**BEFORE THE HONOURABLE MR. JUSTICE D. MULENGA ON THE 18TH
MAY, 2016.**

For the Complainants : In Person

For the Respondent : In Person - Not in Attendance

RULING

Case referred to:

- 1. Shell and BP (2) Limited v Conidaris & Others (1974) Z.R. 65
(SC).**

2. Turkey Properties v Lusaka West Development Company Limited, B.S.K Chiti (sued as Receiver) and Zambia State Insurance Corporation Limited (1984) Z.R. 85 (SC).

3. Vangelatos v Vangelatos (2005) Z.R. 132.

The Complainant filed summons for an injunction order with an affidavit in support dated 18th March, 2016, wherein he seeks to restrain the Respondent from neglecting, ignoring or refusing to enter into the Recognition Agreement with the Complainant's Union and refrain from intimidating its employees.

On the hearing of the application the Respondent was not in attendance neither did it file an affidavit in opposition to the application herein.

There was no reason advanced for the Respondent's failure to attend Court. However, the Complainant had filed an affidavit of service into court on 23rd April, 2016, therefore Leave was granted to the Complainant to proceed with his application in the absence of the Respondent.

The Complainant partly relied on the affidavit in support of the application sworn by the said Complainant.

The Complainant deposed that Mine Contractors and Allied Workers Union of Zambia is a duly registered and recognised Trade Union in Zambia.

The Complainant deposed that there are seventy-five (75) eligible employees of the Respondent who approached the Complainant's Union and showed willingness to join as its members. The Complainant acting on the said seventy-five Respondent's employees' willingness to join its union, the Complainant wrote to the Respondent informing it of its employees' decision to join the Complainant's Union, the said letter is exhibit "**LC2**" in the Complainants' Affidavit in Support of Complaint. The Respondent's reply to the Complainant's letter, was by a letter dated 26th January, 2016 the same is exhibit "**LC3**" in the Complainant's affidavit in support of complaint.

It is the negative response of the Respondent through the said letter which moved the Complainant herein to commence the proceedings herein and make the application in casu.

The Complainant contends in his affidavit in support that the Respondent has refused to recognise the rights of its employees to belong to the union of their own choice instead the Respondent wants to choose a union on behalf of the workers, the same is with the intention to benefit itself and to deny them a right to belong to the union of their own choice.

That seventy-five employees of the Respondent have joined the Complainant's Union as evidenced by Union membership joining forms produced and collectively marked as exhibit "**LC4**".

The Complainant deposed that the Respondent has started to intimidate the employees who have decided to join the Complainant's Union and now fears that if the Respondent is not restrained by a Court order, it shall dismiss all the employees who have joined.

In his viva voce submissions the Complainant urged the Court to grant the application so that the prospective members of the union are protected from dismissals and harassment. He also prayed that the Respondent should be compelled to sign the Recognition Agreement with the Complainant's Union.

In ascertaining whether or not this is an appropriate case in which an interlocutory injunction order can be granted I am moved to consider the principles enunciated in the case of **Shell and (2) Limited v Conidaris & Others (1)** the Supreme Court of Zambia stated:-

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.

It is clear that the Complainant through a notice of complaint filed into Court on 18th March, 2016, seek the following relief:-

- (a) The declaration that the Respondent enters into Recognition Agreement with the Complainant's Union;

- (b) The declaration that the Respondent stops intimidating nor dismissing their employees who have chosen to join and those who still wish to join the Complainant's Union;
- (c) The declaration that the Respondent should not look for the Union on behalf of the employees;
- (d) The grant of the interim injunction;
- (e) Payment of costs for the proceedings.

In the Complainant's Summons for an Injunction Order, the Complainant's application is to restrain the Respondent from neglecting, ignoring or refusing to enter into the Recognition Agreement with the mentioned Complainant Union and to refrain from intimidating their employees.

The question this Court is called upon to answer in ascertaining whether or not to grant an Interlocutory Injunction Order is "what irreparable injury the Complainant or indeed the prospective members of the union likely to suffer if the injunction is not granted?"

It appears to this Court that the Complainant's relief sought in his Notice of Complaint are similar to the ones he seeks the Court to grant under the Injunction Order. It is therefore, my considered view that it is not proper to grant an Injunction Order which shall amount to granting the relief which ought to be given only after hearing the matter and making a determination on the merits. I do not see any irreparable injury which the Complainant and the prospective members of the Complainant Union are likely to suffer considering that if the said members are wrongfully, unfairly or unlawfully dismissed from employment they have a recourse

to this Court for damages or any other relief which the Court may deem appropriate.

On the other hand, the Injunction Order sought if granted would entail compelling the Respondent to enter into a recognition agreement with the Complainant Union which is contrary to the rationale behind the equitable remedy of an Injunction Order.

There is need in this case to preserve the status quo of the parties as deciding otherwise is clearly not in the interest of both parties. The Supreme Court of Zambia held among other things in the case of **Turkey Properties v Lusaka West Development Company Limited, B.S.K Chiti (sued as Receiver) and Zambia State Insurance Corporation Limited (2)** that:-

An Interlocutory injunction is appropriate for the preservation or restoration of a particular situation pending trial.

Definitely, granting an interlocutory injunction in the case in casu to the effect that the Respondent is compelled to enter into a recognition agreement with the Complainant Union is not in any way preserving or restoring the status quo.

In conclusion I find that the Complainant has not demonstrated a clear right to the relief sought considering the fact that he has not exhibited any evidence of the Respondent's intimidatory action against the prospective members of the Union. The case of **Vangelatos v Vangelatos (3)**, is in point where it was held that a court cannot 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.

In the light of the plethora of case law against granting interlocutory order of injunction in cases of this nature, the application herein is denied and it is accordingly dismissed. I make no order as to costs.

Leave to appeal is granted.

Dated at Ndola this **18th** day of **May, 2016**.

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D. MULENGA
JUDGE

