

ZIMCO PROPERTIES LIMITED v LAPCO LIMITED (1988 - 1989) Z.R. 92 (S.C.)

SUPREME COURT
NGULUBE, D.C.J., GARDNER, J.S., AND BWEUPE, AG. J.S.
25TH AUGUST 1988
(S.C.Z. JUDGMENT NO. 23 OF 1988)

Flynote

Civil procedure-Injunction - Injunction inappropriate when damages will suffice.

Headnote

The respondent tendered for the work to be done to the appellants premises. The tender was accepted but when the contract was drawn up it contained a sum less than was agreed in the tender. The respondent sued, *inter alia*, for an injunction to restrain the appellants from doing work on their own premises. The Court granted an interim injunction which was continued after the appellants appealed to have it discharged. The appellants appealed.

Held:

The balance of convenience between the parties as to whether to grant an injunction will only arise if the harm done will be irreparable and damages will not suffice to recompense the plaintiff for any harm which may be suffered.

For the appellant : R. N. Mukelabai, Zimco Properties.
For the respondent : M. B. Michelo, Namukamba Chambers.

Judgment

GARDNER, J.S.: delivered the judgment of the Court.

In this case we will refer to the appellant as the defendant and the respondent as the plaintiff as they were in the Court below.

This is an appeal against a judgment of the High Court refusing to discharge an injunction obtained by the plaintiff against the defendant. The facts of the case are that the plaintiff, a building contractor, tendered for some repairs and redecoration work to be done to the defendant's premises. The tender was accepted by a Tender Board, but, when the plaintiff asked to have the contract drawn up, it is alleged that the legal representative of the defendant produced a contract for a sum less than that which was alleged to have been accepted by the Tender Board. The plaintiff therefore sued the defendant for a declaration restraining the defendant from carrying out the repairs and redecoration work on the defendants' premises. An *ex parte* interim injunction was granted by the High Court restraining the defendant from carrying out the repairs and redecoration work, and, after an application by the defendant to discharge the interim injunction (which had never been dealt with *inter partes*), the learned Commissioner of the High Court refused to order a discharge. This is an appeal against that refusal.

It is quite clear in this case, and it had been accepted by Mr *Michelo* on behalf of the plaintiff, that

the only question arising between the parties is one of money. That is to say, if the plaintiff is allowed to carry out the work, the plaintiff would claim money for so doing and, if the plaintiff is

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not allowed to do the work and in the action to decide whether or not the original tender should be accepted the plaintiff is successful, then the plaintiff will claim damages for loss of profit on the work which it could have done. Various authorities have been quoted before this Court relating to the balance of convenience to the parties in the granting of an injunction. 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. In the circumstances, therefore, the granting of the injunction was improper and this appeal must succeed.

The appeal is allowed and the injunction is discharged. Costs to the appellant/defendant in this Court and in the Court below.

Appeal allowed
