

ZAMBIA STATE INSURANCE CORPORATION LIMITED v DENNIS
MULIKELELA (1990) S.J. (S.C.)

SUPREME COURT
NGULUBE, D.C.J., GARDNER, A.J.S., AND LAWRENCE, J.S.,
27TH SEPTEMBER 1990
(S.C.Z. JUDGMENT NO. 9 OF 1990)

Flynote

Appeal - Injunction - Damages for wrongful dismissal - reinstatement

Headnote

The respondent was employed by the appellant and he was given a notice of dismissal. He maintained that he had been wrongly dismissed, both on the facts and with regard to the procedure used for his dismissal. He issued a writ claiming reinstatement or, in the alternative, damages, and an injunction restraining the appellant from evicting him from the company house. The injunction was granted and the appellant appealed.

Held:

- (i) 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 by damages, not injury which cannot be possibly repaired
- (ii) This is not an appropriate case for the grant of an injunction

Cases referred to:

- (1) Tumkey Properties v Lusaka West Development Co. Ltd (1984) Z.R. 85
- (2) Preston v Luck (1984) 27 C.O 497
- (3) Shell & BP Zambia Limited v Conidaris and Others (1975) Z.R. 174

For the Appellant: Mr M M Mundashi - Zambia State Insurance Corporation,
For the Respondent: Mr R N Ngenda - of Richard Ngenda & Associates

Judgment

GARDNER, A.J.S.: delivered the judgment of the court.

This is an appeal from a High Court grant of an injunction to the respondent restraining the appellant from taking any steps to recover possession of a company house and a company car and to prevent the appellant from making any alterations in the conditions of service of the respondent, which injunction had the effect of nullifying an order of dismissal of the respondent by the appellant.

The facts of the case were that the respondent was employed by the appellant and he was given notice of dismissal. He maintained that he had been wrongly dismissed, both on the facts and with regard to the procedure used for his dismissal. He issued a writ claiming reinstatement or, in the alternative, damages, and an injunction restraining the appellant from evicting him from the company house.

Before the trial the respondent applied *ex parte* for an interlocutory injunction and this injunction was granted pending an *inter parte* hearing by the High Court judge. After the *inter partes* hearing the learned trial judge said that he had considered the case of *Tumkey Properties v Lusaka West Development Co. Limited*(1) and the question whether the respondent could be adequately compensated in damages and decided that this being a case relating to wrongful dismissal He said further that even if the respondent were a licensee his conditions of service affected the issue , and that if the respondent were to be evicted he would suffer irreparable damage. He then went on to say, "The question of reinstatement is another issue" and proceeded to grant the injunction. On the basis of that finding by the learned trial judge an order for an interim injunction was drawn to by the respondent, and this read as follows:

"It is this day ordered that the Defendant, its servants and/or agents be restrained from evicting or attempting to evict the Plaintiff from the property situated at Plot No. 6843 Olympia Park Extension Lusaka, and further that the Defendant be restrained from repossessing Motor Vehicle registration No. AAH 6918 Toyota Corona until a further order or in any way altering the Plaintiff's other conditions of Service."

It was accepted by counsel for both parties that the effect of this order was to nullify the dismissal for both parties of the respondent in that he would be entitled to continue to occupy a company house, to use a company vehicle and to receive all his salary and allowances until such a time as the matter was disposed of at the trial.

Mr Mundashi on behalf of the appellant argued, amongst other things, that the effect of the order was to decide the vital issue that arose in the case and that was one of reinstatement of the respondent in his employment with the appellants.

Mr Ngenda argued that the learned trial judge had applied the correct principles in deciding whether or not to grant the injunction and he referred this court to the case of *Preston v Luck* (2). He further said that there was nothing to indicated in the judge's order that he had not exercised his discretion properly and taken into account all matters that should have taken into account.

Both parties accepted the principle so often propounded by this court that, following earlier decisions both in this court and in the United Kingdom, reinstatement will very rarely be ordered.

In considering this appeal, we accept that the question of whether or not the ultimate decision of a trial court would result in reinstatement of the respondent and of vital importance, and in this respect we accept the principles laid down in the case of *Preston v Luck* (2), as stated by Lord Justice Cotton at page 506 where he said:

"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 of 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."

Those principles have been followed by this court in many cases, one of which was *Shell and PB Zambia Limited v Conidaris and Others* (3), where this court held:

"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 by damages, not injury which cannot be possibly repaired".

As we have said, those are the principles which this court has always followed in connection with the grant of injunctions. In this particular case the question of whether or not the respondent was likely to obtain an order of reinstatement was of vital importance, and the learned judge in his order quite clearly did not consider this matter because he said that the question of reinstatement was another matter. It, therefore, falls for this court to decide on the facts before it whether or not there is anything to show that this case will be exceptional to the extent that any court would be likely to grant reinstatement. There is nothing in the facts as we have recited them put before the learned trial judge below or before this court to make us consider that this will be one of those rare cases, therefore, that this is not an appropriate case for the grant of an interlocutory injunction.

For the reasons which we have given the appeal is allowed, the order for an injunction is discharged and costs will follow the event.

Appeal allowed
