

IN THE SUPREME COURT OF ZAMBIA

-Appeal No. 89 of 2001

HOLDEN AT KABWE

[CIVIL JURISDICTION]

**BETWEEN:**

SIMON KASENGE AND NINE OTHERS - APPELLANTS

VS

SMALL INDUSTRIES DEVELOPMENT  
ORGANISATION LIMITED - RESPONDENTS

**CORAM:** Lewanika, DCJ, Chirwa JS, and Mambilima, JS on the 6<sup>th</sup>

November, 2001 and 8<sup>th</sup> August, 2002.

For the Appellant: In Person

For the Respondent: No Appearance

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### JUDGMENT

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**MAMBILIMA JS**, delivered the Judgment of the Court.

When we head this appeal on 6<sup>th</sup> November, 2001, we allowed it and ordered a re-trial before another Judge. We stated then that we would give our reasons later and this we now do.

The Appellant had by Originating Notice of Motion moved the Court below by seeking the following reliefs:

1. The grant of the new tenancy pursuant to the Landlord and Tenant (Business Premises) Act of the premises known as SIDO Workshop, Kasanda, Kabwe.
2. The determination of the rent which will be reasonable for the Applicants to pay upon the grant of the new tenancy; and
3. Further and other relief as the Court may deem just.

Pending the determination of the matter, the Appellants applied and were granted an ex-parte Order of interlocutory injunction on 6<sup>th</sup> March, 1996. In September, 1997, the Respondent applied to discharge this ex-parte Order of interim injunction. In his Reserved Ruling, the Learned trial Judge refused to discharge the interim injunction stating that the arguments advanced in support of the application were for the main action. The Judge also noted that the hearing of the matter had been set for 2<sup>nd</sup> October, 1997.

When the matter came up for hearing, the First Appellant Simon Kasenge and another Appellant Rex Chipili testified. The Respondent also called one witness. In his Judgment, at the end of the trial, the Learned trial Judge stated that the main issue to be dealt with was the discharge of the injunction earlier granted. According to the Learned trial Judge, other issues were dependant upon this whole issue. After considering the principles governing the grant of injunctions, the Judge stated:-

**"From the above reasoning, I find that there is merit in the application to discharge the order of interlocutory injunction obtained by the applicants. And accordingly, I hereby discharge that Order. For this reason, I am unable to consider the applicants' reliefs set out in their Originating Notice of Motion.**

**Interlocutory Order of injunction obtained by their Applicants on 6<sup>th</sup> of March, 1996 is discharged with costs to the Respondents (Defendants)".**

Before us, the Appellants' main contention is that the Court did not determine the matters in issue. They contended that having earlier refused to discharge the injunction on the ground that the matters raised were for the main action, the Judge misdirected himself and erred when he stated in his Judgment that the main issue to be dealt with was the application for the discharge of the injunction which had been brought by the Defendant. By so doing, the Judge did not determine the contentious core issues of the application for a new tenancy and the rent to be paid. According to the Appellants, the Judge should have first determined the core issues in the main action before discharging the injunction.

After considering the evidence which was adduced by the Appellant and the Respondent, and the Judgment of the lower Court appealed against, it was clear to us that indeed, the main issues in the action which were the application for the grant of a new tenancy and for the determination of the rent to be paid upon the grant of the said new tenancy were not resolved. Instead the Court considered the interlocutory application for the discharge of the injunction which application had already been determined in a Reserved Ruling given by the Court. For this reason, we allowed the appeal and sent the matter back to the

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lower Court to be re-heard by another Judge. We awarded costs to the Appellants.

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D. M. Lewanika  
**DEPUTY CHIEF JUSTICE**

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D. K. Chirwa  
**SUPREME COURT JUDGE**

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I. C. M. Mambilima  
**SUPREME COURT JUDGE**