

IN THE SUPREME COURT OF ZAMBIA APPEAL NO. 173 OF 2002

HOLDEN AT LUSAKA

(CIVIL JURISDICTION)

B E T W E E N:

MAJOR BAXTER C. CHIBANDA

APPELLANT

AND

MOSES B. MULEVU

RESPONDENT

CORAM: SAKALA, CJ., CHIBESAKUNDA AND SILOMBA JJS.

On 18th March and 18th July. 2003

For the Appellant : Mr. M.K. Mubonda of DH Kemp and Co.

For the Respondent : Mrs. I. Kunda of George Kunda and Co.

on behalf of Munsaka Chambers

J U D G M E N T

Sakala, CJ., delivered the judgment of the court.

For convenience, we shall refer to the appellant as the 1st defendant and to the respondent as the plaintiff, which designations they were in the court below. In the court below, there were also second and third defendants who are not parties to this appeal. When we heard this appeal we dismissed

it with costs. We directed that the parties proceed with the main trial. We indicated that we shall give our reasons later. We now give those reasons.

This is an appeal against a judgment of the High Court ordering that the Ex-parte injunction granted earlier should continue until the determination of the case. The facts of the case are straight forward. The plaintiff was former General Manager of Zambia Co-operative Federation Accounting Services and a sitting tenant of house No. 441a/205, Kasangula Road, Roma Township belonging to his employers. The 1st defendant was also a former employee of the Zambia Co-operative Federation Ltd and a sitting tenant of house No. A/96/F737a, Vubu Road in Emmasdale Lusaka also belonging to his employers. The 1st defendant wrote the plaintiff informing him that the house he was occupying had been transferred to the 1st Defendant by the 2nd and 3rd Defendants. At that time the plaintiff's terminal benefits had not been paid by his former employers. The plaintiff then lodged a caveat on the house on the basis of the Ex-parte injunction granted to him earlier. Despite the existence of the caveat, the 2nd and 3rd defendants offered the house for sale and subsequently transferred it by way of Title Deeds to the 1st defendant.

The plaintiff commenced proceedings by a writ of summons against the 1st, the 2nd and the 3rd defendants, claiming for an Interim Injunction to restrain the 1st defendant from evicting him from the house until the matter

had been determined by the court; for an order/declaration that the decision to sell house No. 441a/205, Kasangula Road, Roma in which the plaintiff had been a sitting tenant to the 1st defendant who was a sitting tenant in another house namely; Plot No. A/96/F737, Vubu Road, Emmasdale, Lusaka without giving the plaintiff an option to purchase the same was unreasonable exercise of discretion by the 2nd and 3rd defendants rendering the purported sale null and void ab initio; and for an order that the purported Title Deeds issued to the 1st defendant, if any be cancelled as they were issued in bad faith and illegally as the plaintiff had placed a caveat on the property. It is in these proceedings that the plaintiff was granted the Ex-parte order, in which subsequently, during the inter-parte hearing, the court ordered the continuation of the order until final determination of the case.

In dealing with the matter, the court examined the principles governing the grant of interim injunctions. The court noted that the claim for the injunction was tied to the nature of the claim and that in the circumstances of the case, it would be unconscionable to deny the plaintiff the injunction. Accordingly, the court ordered the continuation of the injunction until final determination of the case.

On behalf of the defendant, two grounds of appeal were argued before us. These were:- that the learned trial Judge misdirected himself in law in ordering the continuation of the Ex-parte order for interim injunction when

there was no evidence establishing that the plaintiff's right to relief was clear to protect him from irreparable injury; and that the learned trial Judge exercised his discretion wrongly in ordering the continuation of the interim injunction.

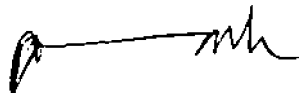
We considered these grounds. The undisputed facts of the case are that the plaintiff was a sitting tenant and also a former employee of the Zambia Co-operative Federation Accounting Services who had not been paid his terminal benefits. The 1st defendant was not a sitting tenant of the house in issue. For these reasons, we were satisfied that the plaintiff had established a clear right to relief to entitle him to an interim order of an injunction pending the determination of the main actions. It was for those reasons that we dismissed the appeal with costs.



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E.L. SAKALA
CHIEF JUSTICE



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L.P. CHIBESAKUNDA
SUPREME COURT JUDGE



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S.S. SILOMBA
SUPREME COURT JUDGE