

**IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

APPEAL NO. 128 OF 2003

BETWEEN:

ZALIWE SAILI NYONI

-

Appellant

and

CHILANGA CEMENT PLC

-

Respondent

**Coram: Chirwa, Chitengi and Silomba JJs on 26th May 2005 and
10th January 2006.**

For the Appellant: **Mr J Kalokoni, Kalokoni & Company**

For the Respondent: **Mr N Mulikita, Corpus Globe**

J U D G M E N T

Chirwa, JS delivered the judgment of the Court:-

Cases referred to:

1. **Gideon Mundanda v Timothy Mulwani & Others [1987] Z.R. 29**
2. **Gondwe v BP (Zambia) Limited [1985-87] Z.R 178**

When we heard the appeal on 26th May 2005, we allowed the appeal against the discharge of the injunction and ordered that the injunction be restored and the matter proceeds on merit and promised to give our reasons later. This we now do.

The main action pending in the Court below relates to the appellant's terminal benefits and whether she is entitled to purchase the

house she was occupying, as a sitting tenant and whether she was entitled to any refund of some money paid towards the purchase of a car under her conditions of service. Her services having been terminated, moves were made to evict her from the house and to repossess the car she obtained under the car-loan scheme administered by the respondent, her former employer. The respondent wrote the appellant, indicating that she should vacate the house and to protect her interest in the house already offered to her, she obtained, on ex-parte application, an injunction restraining the respondent from evicting her from the house and from taking possession of the car in issue. At the inter-party hearing, the ex-parte injunction was discharged on the ground that the appellant would not suffer any irreparable damage. The appellant appealed against that discharge of the injunction.

There were two grounds of appeal. The first was that the learned trial judge erred in law and fact in holding that damages could adequately compensate the appellant for the loss of an interest in land. The second ground was that the learned trial judge erred in law when he discharged the injunction to purchase the personal-to-holder car the appellant was using knowing very well that the car aforesaid was not a perquisite but a condition or a benefit to be enjoyed even after leaving employment according to the applicable car scheme.

The appellant filed detailed written heads of argument on which they relied at the hearing of the appeal. There were no heads of

argument from the respondent; the reason being that Counsel who previously had the conduct of the matter had left and the new Counsel was only aware of the matter coming up a week before the hearing and was therefore not ready with the written heads of arguments and sought an adjournment. Counsel for the appellant opposed the adjournment stating that when he talked to Counsel for the respondent over the matter, Counsel for the respondent indicated that he was ready to proceed with the appeal. Counsel for the respondent did not deny this discussion. We therefore decided to proceed with the appeal without any heads of arguments from the respondent.

We have considered the written heads of argument filed by the appellant and we do not intend to go through them but merely reiterate what we have said before in cases like **GIDEON MUNDANDA v TIMOTHY MULWANI & OTHERS (1)**, that although the granting of injunction is at the discretion of the Court, this discretion is limited when it comes to interest in land as damages cannot adequately compensate a party for breach of contract for sale of land. Further in the **GONDWE v BP (ZAMBIA) LIMITED (2)**, we said that there could be benefits that could be enjoyed even after the termination of the services and where there is a probability that a party may be entitled to the relief he is seeking in the main action, he should be granted the inter-locutory junction.

In the present case, there are two issues that were subject of the injunction proceedings. Firstly, it was the house the appellant occupied and which it is alleged was offered to her to purchase and she accepted

the offer. This clearly established her interest in the land and the learned trial judge misdirected himself by linking it to the computation of the applicant's redundancy package. The redundancy package had nothing to do with the offer and acceptance to purchase the house. Whether her claim to a better redundancy succeeds or not, has nothing to do with the agreement for the purchase of the house. This being the case, the learned trial judge should have considered whether compensation would sufficiently atone for the damages and in view of our numerous decisions the answer would have been in the negative. Damages or compensation cannot adequately atone for loss of land.

The second issue was the car which the appellant obtained under the loan scheme provided by the respondent. The car was being used by the appellant as her own and it was to be hers absolutely after full payment. The issue of termination of her interest in the car after her services were terminated has to be decided in the main action and the car cannot be left with the respondent when the appellant made substantial payments towards its purchase. The status quo had to be preserved by an interlocutory injunction.

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It is for these reasons that we allowed the appeal and reinstated the interlocutory injunction pending the determination of the main action.

Costs will abide the outcome of the main trial.



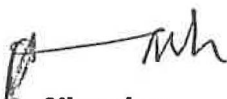
D K Chirwa

JUDGE OF THE SUPREME COURT



P Chitengi

JUDGE OF THE SUPREME COURT



S S Silomba

JUDGE OF THE SUPREME COURT