

SAKALA, C.J., delivered the Judgment of the Court.

Cases Referred to:

1. **Shell and BP Zambia Limited v Conidaris and Others (1975) Z.R. 174**
2. **ZSIC v Dennis Mulukelela (1990/1992) Z.R. 18**
3. **American Cyanamid v Ethicon (1975) A.C. 396, (1975) 1 ALL. E.R. 509 HL.**

This is an appeal against the Ruling of the High Court dismissing the Appellant's application for an Order for an Interim Injunction and discharging the Ex-parte Interim Order granted to the Appellant on 15th October, 2004.

The brief facts of the case are that by a letter dated 4th February, 2003, the 2nd Respondent offered for sale the premises known as Plot Number 58 Kabushi, Ndola, to the Appellant, who were then Tenant of the said premises. The Appellant promised to source for funds from Donors in America to buy the House.

The 2nd Respondent, subsequently, sold the Property to the 3rd Respondent as the Appellant had not been paying rent since September, 2004.

The Appellant then commenced proceedings by way of a Writ of Summons claiming for a declaration that he was a lawful Tenant and the intending purchaser of the property in issue. He also

claimed for an injunction to restrain the Respondents from any unlawful eviction of the Appellant from the property, and from interfering with the normal operations of the Appellant and from trespassing on the said property.

The Appellant also claimed for an order for specific performance by the Respondents of the agreement for sale. Suffice it to mention that the Appellant was granted an ex-parte order for an interim injunction.

At the inter-party hearing, the trial court reviewed the affidavit evidence in support and in opposition to the application. The Court found that, although the Appellant was granted an ex-party order for an interim injunction, he had failed to satisfy the legal requirements of his right to relief; and that he had also failed to exhibit a Certificate of Title to the property, and that he had failed to show that he had a likelihood of succeeding in the main case, and that he was likely to suffer irreparable damage or injury if the order for the interim injunction was not granted.

The Court pointed out that as held in the case of ***Shell and BP (Z) Limited vs Conidaris and Others***¹, mere inconvenience was not enough; the injury must be substantial, not injury which can easily be remedied by payment of damages. The Court found that the balance of convenience was in favour of not

granting the Interlocutory Order to the Appellant. The application was dismissed with costs, hence the appeal to this Court.

In support of the appeal, the Appellant, who appeared in person, filed a memorandum containing four (4) grounds.

These are:-

- 1. The lower Court misdirected itself in holding that the Appellant's right to relief was unclear when he in fact established evidence that he was a contractual purchaser of the premises in issue and which contractual had not been terminated by either party;***
- 2. The lower Court erred in holding that the Appellant was not the lawful owner of the premises that he had not exhibited title deeds when evidence showed that he was a lawful contractual purchaser and had a lawful authority to continue running a community school and orphanage there;***
- 3. The fact that the Respondent and the Administratrix of the estate no longer had any financial means to pay the Appellant to the risk of irreparable damage; and***

4. The Court erred in ordering that the balance of convenience did not lie in granting an injunction when there was evidence of the traumatic effect of the repossession of the school on the orphans and vulnerable children.

The Appellant was, subsequently, granted leave to file a further six grounds of appeal, bringing the total number of grounds to ten. These grounds are on record. On account of the view we take of this appeal, which involves the exercise of the trial Court's discretion of whether to grant the injunction or not, we propose to deal with all the grounds as one, following the course taken by Counsel for the 3rd Respondent. Thus, we do not intend to delve into the written heads of argument in great detail.

The gist and the sum total of the Appellants written heads of argument and submissions on the ten grounds is that this was a proper case in which the Court should exercise its discretion and grant an injunction to the Appellant.

At this juncture, it must be stated and observed that the 1st Respondent, who appeared in person, did not file heads of argument and did not make any oral submissions. But she informed the Court that she did not know why she was called; and that she did not know anything about the case as she did not appear in the High Court.

As to the 2nd Respondent, he too did not file heads of argument. But in his oral submissions, he informed the Court that he sold the property to the 3rd Respondent; that the Appellant refused to move out of the house and that he did not pay rent. He supported the Ruling of the lower Court.

In the written response to the written heads of argument on behalf of the 3rd Respondent, all the grounds of appeal were treated as one ground. It was contended that the basis upon which the Appellant sought an injunction from the Court was to protect his perceived right; that the Appellant's main argument was that as a Tenant of the premises in issue, he should have been given the first option to purchase the premises in issue; that there is evidence on record that on the 4th February, 2003, the Appellant was given an offer to purchase the property in issue, and for a period of over one year, he was not able to raise the purchase price and there was no evidence on record that the Appellant had indeed, accepted the offer to purchase the property in issue and that even assuming that he accepted the offer, he should have raised the requisite funds within a reasonable time, particularly that there was no contract of sale executed.

It was submitted that the Appellant's right to relief was not clear, the right he sought to protect was clouded and that the chances of succeeding at the main trial were nil.

It was pointed out that the Appellant may suffer an inconvenience of relocating to other premises; but would not suffer any irreparable injury which could not be atoned for by damages. It was submitted that this was not a proper case in which this Court ought to exercise its discretion and grant the injunction.

We have addressed our minds to the Affidavit evidence on record, the pleadings, the Ruling appealed against and the arguments and submissions on behalf of the Appellant and on behalf of the 3rd Respondent.

According to the endorsement on the **Writ of Summons**, two of the claims by the Appellant were for:

“a Declaration that the Plaintiff is the lawful sitting Tenant of premises known as Plot number 58, situate Kabushi of Ndola having been such lawful tenant for the last three years and that as such the Plaintiff is entitled to the First option of purchase of the said Property to the exclusion of all other persons unless the Plaintiff refuses to exercise the said option. An order of injunction restraining the Defendants whether by themselves, servants, agents or otherwise from unlawfully evicting the Plaintiff from the said premises and interfering with the operations of the

Plaintiff on the said premises or trespassing thereon.”

This was the basis upon which the Appellant sought an injunction from the lower Court and from this Court.

The Court below, in considering the Application, had this to say:-

“However, in order for an application for an interlocutory injunction to succeed there are certain requirements that have to be satisfied in accordance with the principle guidelines laid down based on decided cases, such as the Shell & BP Zambia Limited v Conidaris & Others¹, ZSIC v Dennis Mulukelela² and American Cyanamid v Ethicon³. Some of these requirements are that, (i) the Plaintiff must have a clear right to relief and, (ii) a likelihood of succeeding in the main case, (iii) a legal right to the right he seeks to protect, (iv) the Plaintiff must show that he would suffer irreparable damage if an injunction is not granted as damages would not be an adequate remedy, (v) and the court has to weigh the balance of convenience since this is a discretionary remedy.”

The Appellant’s main argument was that as a Tenant of the premises in issue, he should have been given the first option to purchase the premises. But there is documentary evidence on

record that the Appellant was given an offer which lasted for over a year; but he was not able to raise the purchase price.

We agree with the lower Court that the Appellant's right to relief was not clear and that on the evidence on record, he was given first option to raise the purchase price. We are satisfied that this was not a proper case in which the lower Court or this Court ought to exercise its discretion to grant the Appellant an injunction.

We, accordingly, dismiss the appeal as lacking in merit. We make no order as to costs.

E. L. SAKALA
CHIEF JUSTICE

H. CHIBOMBA
SUPREME COURT JUDGE

P. MUSONDA
SUPREME COURT JUDGE