

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2016/HP/1713

**B E T W E E N :**

REGINA CHIPITAMBILI

PLAINTIFF**AND**

LIONS GROUP QUARRIES LIMITED

DEFENDANT

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the
19th day of April, 2017**

For the Plaintiff : Mr. D.K. Kasote, Messrs Chifumu Banda Associates
For the Defendant : Ms. D.M. Mwewa, Messrs KBF & Partners

R U L I N G

Case Authorities Referred To:

1. *Shell & BP v Conidaris* (1975) Z.L.R at 174
2. *Rylands v Fletcher* (1868) L.R. 3HL 330
3. *American Cynamid Co v Ethicon Limited* (1975) A.C. 316

Legislation and Other Works Referred To:

1. *High Court Act, Chapter 27*
2. *Halsbury's Laws of England 4th Edition*

This is the Plaintiff's application for an Order of interim injunction. The summons do not make reference to the High Court

or Supreme Court Rules upon which the application is founded. I however, take judicial notice that the application before Court is premised on known principles of law and can be considered under the provisions of Order 27 Rule 1 of the High Court Rules. The application is supported by an Affidavit. By this application, the Plaintiff seeks to restrain the Defendant from discharging water from its pits onto the Plaintiff's property, known as Lot No. 6285/M Lusaka West.

In the Affidavit, the Plaintiff, **Regina Chipitambili** deposes that she is the registered and legal proprietor of Lot No. 6285/M, Lusaka West, as shown in the exhibit marked "**RC1.**" She also deposes that the Defendant Company is carrying out quarrying activities on an adjacent property with impunity. It is discharging water from the pits dug on its property unto hers.

It is deposed that the Defendant Company installed pipes from its pits on the adjacent property and laid them on to her property without her consent and authority. The deponent avers that huge amounts of water are discharged therefrom, which have caused

massive damage and soil erosion on her property. She further avers that the Defendant has ignored and refused to settle the dispute. She prays for an interim injunction to restrain the Defendant Company from discharging water on to her property and to remove the illegally installed pipes.

James Chansa, the General Manager at the Defendant Company swore an Affidavit in Opposition, where he deposes that the Defendant Company obtained a small scale mining licence in the year 2007. Further, that the Defendant Company obtained various properties collectively to approximately just over 300 hectares in size for quarry mining. The deponent states that the property obtained and certificates of title issued thereon are as follows:

- i. Lot 6291*
- ii. Lot 6292*
- iii. Lot 6293*
- iv. Lot 6294*
- v. Lot 6295*
- vi. Lot 6296*
- vii. S/D of Lot 6283*

The deponent also states that the Defendant Company has obtained mining rights and a 25 year large scale mining licence over

the Lots as shown in the exhibit marked **"JC1"**. It is deposed that the Defendant Company has not been carrying out quarry mining activities with impunity or discharging water from its pits onto the Plaintiff's property. It is also deposed that the Defendant has been carrying out mining activity within the permit of the environmental regulations. The deponent avers that the Defendant company has never installed pipes on Lot 6285/M and water has never been pumped from Lot 6294/M belonging to the Defendant, and that if the Defendant has installed pipes, the Plaintiff has every right to remove them.

The deponent states that the water on Lot 6294/M was escalated due to the rainy season and the land is currently dry. Further, that the only time there was an issue of water waste was in 2014, when the Zambia Environmental Agency, unrelated to the Plaintiff's claim, implored the Defendant to recycle water as shown in the exhibit marked **"JC2."**

The deponent insists that there is no mining activity on the Defendant's Lot 6294/M. Secondly, that from where there is

mining activity to where Lot 6285/M is located, there is a road reserve. The deponent states that water from its mining activities is discharged into de-watering dams situated on the northern extremity of its property as shown in the exhibit marked **"JC4."**

The deponent avers that the Plaintiff has not carried out any agricultural activities on her land given the geographical barriers, in that, the whole area is covered with lime. As such no crops can be grown nor animals reared. The deponent states that the Plaintiff approached the Defendant to buy Lot No. 6285/M at over K1,000,000, which the Defendant tried to purchase but abandoned after the Plaintiff insisted on colossal sums of money.

The deponent states that the Plaintiff's property has no market value because the land in the whole surrounding area is only good for quarry mining. The deponent concludes with a prayer to the Court beseeching it to decline the Plaintiff's application for an interim injunction.

In the Affidavit in Reply, the deponent **Regina Chipitambili**

insists that the Defendant Company is carrying out quarry activities on an adjacent property from which, it is discharging water onto her property with impunity. The deponent also insists that the Defendant has installed pipes on her land, which have caused floods on her property. She insists that she has been growing food on her property for many years and the land is good for agricultural purposes.

Only Learned Counsel for the Defendant filed Skeleton Arguments, wherein she referred me to the Learned Authors of Halsbury's Laws of England 4th Edition at page 448 at paragraph 853 who state that:

"...on an application for interlocutory injunction, the Court must be satisfied that there is a serious question to be tried. The material available to the Court at the hearing of the application must disclose that the Plaintiff has real prospects for succeeding in his claim."

She argued that the Plaintiff had not disclosed any prospects to be granted injunctive relief and cited the case of **Shell & BP (Zambia) Limited v Conoridas¹** where the Supreme Court held that:

“... all the Courts need to do at the interlocutory stage is to be satisfied that there is a serious question to be tried at the hearing and that the Court has to interfere to preserve property without waiting for the right to be finally established at the trial...”

Counsel contended that the Plaintiff's case did not establish a clear right to relief, in which her claim for an interlocutory injunction could be considered. On the risk of the Plaintiff suffering irreparable injury which cannot be atoned for by an award of damages, Counsel submitted that the Plaintiff had not demonstrated the irreparable damage complained of.

Counsel adverted to the case of **Rylands v Fletcher**² where it held that:

“The Plaintiff must prove that:

- 1. The Defendant made a non-natural use of his land**
- 2. The Defendant brought onto his land something which was likely to do mischief if it escaped**
- 3. The substance in question escaped; and**
- 4. Damage was caused to the Plaintiff's property (or person) as a result of the escape.”**

All this was to buttress her contention that the Plaintiff was not entitled to injunctive relief.

I have seriously considered the affidavits filed herein by the respective parties and the Defendant's submissions. It is trite law

that the principles, which a Court must consider when dealing with injunctive relief are stated in cases like **Shell & BP v Conidaris**¹ and **American Cynamid**³. In giving Court's guidance, the Supreme Court held in the case of **Shell & BP v Conidaris**¹, that a person seeking injunctive relief must demonstrate the following:

- a) *A clear right to relief*
- b) *Irreparable damage and injury that cannot be atoned for by damages*
- c) *A tilt of the balance of convenience in the Plaintiff's favour.*

In considering injunctive reliefs, the first issue that the Court must consider is whether on the available evidence, there is a serious question to be tried and if the Plaintiff is entitled to relief. Upon consideration of the facts, I am of the view that there is a serious question to be tried. The controversy on whether the Defendant is strictly liable for the Plaintiff's claim of loss of value of property or not can only be determined at trial and not at this interlocutory stage.

The second issue to consider is whether the Plaintiff has suffered irreparable damage which cannot be atoned by an award of damages. From the affidavit evidence, I note that the Plaintiff and

Defendant hold title for their properties. By her own admission, the Plaintiff offered to sell the Defendant her property given its diminished value as a result of the Defendant's actions. The Defendant contends that it failed to buy the Plaintiff's property because the Plaintiff demanded a colossal amount of money. The view I take is that, it is quite clear that the Plaintiff would prefer a monetary award if she is successful at trial. On that basis, I refuse to grant the Plaintiff an interim injunction as this is not the purpose of the relief sought. This application is dismissed forthwith.

I award costs to the Defendant to be taxed in default of agreement.

Leave to appeal is granted.

Dated this 19th day of April, 2017


M. Mapani-Kawimbe
HIGH COURT JUDGE