

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

2017/HP/0801



B E T W E E N :

DOMINIC MULENGA

PLAINTIFF

AND

DR. MUSONDA SIMWAYI

DEFENDANT

Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the 6th day of June, 2017

For the Plaintiff:

In Person

For the Defendant:

No Appearance

R U L I N G

Case Authorities Referred To:

1. *Shell & BP v Conidaris* (1975) Z.R. 174
2. *American Cynamid Co. v Ethicon Limited* (1975) A.C 316

Legislation Referred To:

1. *High Court Act, Chapter 27*

This is the Plaintiff's application for an Order of Interim Injunction filed pursuant to Order 27 Rule 1 of the High Court Rules. It is supported by an Affidavit. By this application, the

Plaintiff seeks to restrain the Defendant from evicting him from Plot No. 161/43, Makeni, Lusaka.

In the Affidavit, the Plaintiff, **Dominic Mulenga** deposes that sometime in 2001, he was employed as a domestic worker/caretaker of the Defendant's property. He was also engaged as bricklayer by the Defendant to construct a foundation at K3,500. The Defendant agreed to pay him monthly salaries of a domestic worker and K100 as a meal allowance every month end.

The deponent states the Defendant only paid him K100 meal allowance for three months in 2001 and K400 as part payment of the K3,500 for the construction of the foundation box. The balance for the construction remains outstanding. The deponent states that the Defendant stopped paying him his meal allowance and salaries when he left the country for studies.

The Plaintiff states that upon the Defendant's return, he ordered him to vacate his premises without giving him notice. Further, the Defendant brought in a new tenant at his premises as shown in the exhibit marked "**DC1**." The deponent states that if he

vacates the premises, his family will be displaced and the Defendant may not pay him the money he owes him. In addition, the deponent avers that he has not been paid repatriation allowance to return to Kasama. He thus, seeks an interim injunction to restrain the Defendant from evicting him from Plot No. 161/43, Makeni until the determination of this case.

I have anxiously considered the affidavit filed in support of the application. The principles a Court must consider when dealing with injunctive relief are stated in cases like **Shell & BP v Conidaris**¹ and **American Cynamid**². The guidance given by the Supreme Court in the case of **Shell & BP v Conidaris**¹, is 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.*

Thus, the first issue that I am obliged to 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 question to be tried and it is whether

the Plaintiff is entitled to the quantum of the benefits claimed. This can only be determined at trial and not at this interlocutory stage.

I find that all the Plaintiff's claims are stated in monetary terms, except for the claim of damages for disturbing his peace, inconvenience and trauma. I am of the considered view that should the Plaintiff succeed at trial, then a monetary award will adequately atone any loss. The fact that the Plaintiff is allegedly owed money by the Defendant does not entitle him to continue occupying the Defendant's premises without his consent. He is a trespasser who must vacate the premises forthwith.

It is trite that an injunction cannot be granted against a property owner, and that being the case, I find no merit in the Plaintiff's application. Accordingly, I refuse to grant the Plaintiff an order of interim injunction and dismiss his application. I make no order as to costs.

Leave to appeal is granted.

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Dated this 6th day of June, 2017.

M. Mapani

M. Mapani-Kawimbe
HIGH COURT JUDGE