

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

2018/HP/0849

**BETWEEN :**

BRIAN MUNAMWIMBU
JORDAN MUMBA
CLEMENT CHAKA MUKUMA
JACKSON CHIRWA
MWEBO MASINGE
SAMUEL CHIREMBO
JUMA LEVY BANDA
CHIKONDE LUANDO
FRANKLIN LUANDO
SUZYO M'HANGO
CECILIA CHIPASHA MBATI

**1ST PLAINTIFF
2ND PLAINTIFF
3RD PLAINTIFF
4TH PLAINTIFF
5TH PLAINTIFF
6TH PLAINTIFF
7TH PLAINTIFF
8TH PLAINTIFF
9TH PLAINTIFF
10TH PLAINTIFF
11TH PLAINTIFF**

AND

ANDREW BANDA
NEW FUTURE FINANCIAL COMPANY LTD

**1ST DEFENDANT
2ND DEFENDANT**

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the
24th day of May, 2018**

For the Plaintiffs : Mr. Simubali, Messrs Lennard Lane Partners
For the 1st Defendant : In Person
For the 2nd Defendant : No Appearance

R U L I N G

Cases Referred To:

1. *Shell and BP (Z) Limited v Conidaris & Others* (1975) Z.R 17
2. *Construction and Investment Holdings Limited v William Jacks and Company (Zambia) Limited* (1972) Z.R 66 (H.C)
3. *Mackic Edin, Nathan Ethel Chongo, The Attorney General v Ranate Schempp* (2006) Z.R 148
4. *Harton Ndovu v Zambia Education Company (Z) Ltd.* (1980) Z.R 184

Legislation Referred To:

1. *High Court Rules, Chapter 27*

Other works Referred To:

1. *Halsbury's Laws of England 4th Edition*

By this application, the Plaintiffs seek an order of interim injunction pursuant to Order 27 Rule 1 of the High Court Rules. It is supported by an Affidavit.

The deponents state that on diverse dates, the 1st Defendant entered into contracts of sale with them for varying sizes of proposed subdivisions of Lot 12570/M, Lusaka. That they all paid the full purchase fixed by the 1st Defendant as shown in the exhibit marked "**BM-1 (i) – BM-1(x)**". That it was a condition of each contract of sale at completion that the 1st Defendant would facilitate the registration of the subdivisions into their names, a condition he failed to meet.

The deponents aver that sometime in April, 2018, some of them decided to register their property at Ministry of Lands and discovered that the 2nd Defendant had placed a caveat on Lot 12570/M as shown in the exhibit marked "**BM-2.**" That they

approached the directors of the 2nd Defendant Company and were informed that the 1st Defendant borrowed US\$70,000 sometime in December, 2017. Further, that he pledged the entire property as security without their knowledge. The deponents also aver that upon obtaining the loan, the 1st Defendant signed a contract of sale as opposed to a mortgage, with a 'buy back' clause within four months, as shown in the exhibit marked "**BM-3.**"

The deponents state that the 1st Defendant has defaulted on the loan obligations and the 2nd Defendant may seek to register the property in its name to recover the loan. They pray for an order of interim injunction to restrain the Defendants from registering the documents of sale and change of ownership for Lot No. 12570/M with the Ministry of Lands until the matter is finally determined.

The Defendants did not file Affidavits in Opposition even after the 1st Defendant undertook to do so by 21st May, 2018.

I have anxiously considered the application, the Affidavits and Skeleton Arguments filed herein. The Learned authors of

Halsbury's Laws of England 4th Edition at page 448 at paragraph 853 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."

In the case of **Shell and BP Zambia Limited v Conidaris¹**, 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...."

Further, in **Shell & BP**, the Supreme Court stated 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; and**
- c) A tilt of the balance of convenience in the Plaintiff's favour."**

The first issue I must consider is whether on the available evidence, there is a serious question to be tried and if the Plaintiffs are entitled to relief. The Plaintiffs contend that they bought their property on diverse dates and before the 2nd Defendant transacted with the 1st Defendant. By an order of interim injunction, they intend to restrain the Defendants from registering documents of sale and change of ownership with the Ministry of Lands.

According to exhibit "**BM-2**" in the Affidavit in Support, entry no. 5 of the Lands Register shows that the 2nd Defendant lodged a caveat on 7th December, 2017 as an intending purchaser of L/12570/M. Prior to that entry, it executed a contract of sale with the 1st Defendant.

Section 76 of the Lands and Deeds Registry Act provides that:

"Any person

- (a) Claiming to be entitled to or to be beneficially interested in any land or any estate or interest therein by virtue of any unregistered agreement or other instrument or transmission, or of any trust expressed or implied, or otherwise howsoever; or**
- (b) Transferring any estate or interest in land to any other person to be held in trust; or**
- (c) Being an intending purchaser or mortgage of any land;**

may at any time lodge with the Registrar a caveat in Form 8 in the Schedule."

In the case of **Construction and Investment Holdings Limited v William Jacks and Company (Zambia) Limited²**, Scott J, as he then was stated the effect of a caveat as follows:

"...if one looks at this ordinance one observes that, where a person lodges a caveat under s. 49, the Registrar is forbidden to make any entry on the register having the effect of charging or transferring or otherwise affecting the estate or interest protected by a caveat."

From the authorities cited, it is trite that as long as a caveat remains in force, the Registrar is proscribed from making any entry on the Lands Register. However, an instrument that was accepted

for registration before the receipt of caveat may be registered as stated in the case of **Mackic Edin, Nathan Ethel Chongo, The Attorney General v Ranate Schempp**³, where the Supreme Court held inter alia that:

“2. In terms of section 7 of the Lands and Deeds Registry Act, all documents required for registration have priority according to the date of registration in the registry.”

According to the case of **Harton Ndovu v Zambia Education Company (Z) Ltd**⁴, in an application for an injunction, the Court is not called upon to decide finally on the rights of the parties but merely satisfy itself that there is a serious question to be tried at the hearing. Further, that on the facts presented, there is probability that the Plaintiff is entitled to relief.

After carefully analyzing the facts, it is not in dispute that a caveat was lodged by the 2nd Defendant on 7th December, 2017. It thereby precludes the Registrar from making any entry on the Lands Register vis the property in dispute. In other words, no further documents can be lodged on the register.

The Plaintiffs have not shown that the Defendants intend to register the documents of sale or change of ownership. Their fear is probably based on an event, that is likely or unlikely to happen. This cannot be the basis for seeking injunctive relief even if the Plaintiffs have issue with the 1st Defendant on their incomplete contracts of sale for the various subdivisions. I find it otiose to consider the question of irreparable damage and balance of convenience because the caveat proscribes registration of documents on the Lands register.

Accordingly, I hold that this is not a proper case in which I can grant an order of interim injunction and dismiss this application forthwith. I make no order as to costs.

Dated this 24th day of May, 2018.


M. Mapani-Kawimbe
HIGH COURT JUDGE