

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

2018/HP/0326

BETWEEN:

SAMSON MWANALILA



PLAINTIFF

AND

DAVIES HAMUCHIMBA

DEFENDANT

**BEFORE THE HON. MRS JUSTICE S. M WANJELANI IN
CHAMBERS ON THE 14TH DAY OF MAY, 2018**

For the Plaintiff: In person

For the Defendant: Absent

RULING

Case referred to:

1. *American Cynamid Company V Ethicon* (1975) AC 396
2. *Hilary Bernard Mukosa V Michael Ronaldson* (1993) SJ 25 (SC)
3. *Shell and BP (Z) Ltd V Conidarius and Others* (1975) AC 396.
4. *Jane Mwenya and Another V Paul Kapenga* (1998) ZR 71

Legislation referred to:

1. *High Court Rules, Cap 27 of the Laws of Zambia.*

The Plaintiff filed this application for an Order of Interim Injunction to restrain the Defendant from selling or transferring ownership of

House No. 22/66 situated in John Laing Compound pending determination of this matter.

The Plaintiff, by an Amended Statement of Claim dated 6th March, 2018, sought:

- i. *Damages for specific Performance of an agreement dated 10th March, 2017;*
- ii. *damages for breach of contract and;*
- iii. *an order for the Defendant to surrender **House No. 22/66 John Laing Compound.***

In the Affidavit in Support of the application for injunction, the Plaintiff averred that the Defendant borrowed a total of K67,500.00 on 10th March, 2017 and agreed to surrender his house being, **House No. 22/66 John Laing** in default of payment as per exhibit "SM1".

The Plaintiff averred that the Defendant was supposed to pay back the money on 30th April, 2017 but only managed to pay K26,500.00 on 27th October, 2017, after intervention from the Police where he was charged with obtaining credit on false pretense.

The Plaintiff contends that the Defendant still owes him the balance of K41,000.00 with interest, hence the application.

The Defendant filed an Affidavit in Opposition, in which he averred that he was lured to sign a fabricated document at the Police under extreme pressure on 27th October, 2017 and not 10th March, 2017 as alleged by the Plaintiff. He also admitted making the payment of

K26, 500.00 on 27th October, 2017 but avers that the figure is fabricated.

During the hearing at which the Defendant did not appear, the Plaintiff beseeched the Court to grant him the Order of Interim Injunction as he could not lose both the money and the house.

I have considered the Parties' affidavits and the Plaintiff's submission.

It is trite that an injunction is an equitable remedy granted in the Court's discretion. The House of Lords' in the case of **American Cynamid Company V Ethicon**⁽¹⁾ provided guidance ascertain whether or not an injunction should be granted by asking the following questions:

1. Is there a serious question to be tried?
2. Would damages be adequate?
3. Where does the balance of convenience lie?

It is not in dispute that there was a relationship between the Parties as confirmed by the transaction of a repayment of K26,500.00 by the Defendant to the Plaintiff. However the Plaintiff contends that there is a balance of K41,000.00 while the Defendant avers that the figure is fabricated.

Thus there is a serious dispute between the Parties. That being the case, would damages be an adequate remedy?

The transaction obviously related to quantifiable amounts and the Plaintiff avers that the Defendant agreed to give his in default of payment, which allegation is disputed by the Defendant.

A perusal of exhibit “**SM1**” shows that the Parties agreed that the Defendant would use his house “*as security failure to pay back will result in surrendering my house to Mr. Samson Mwanalila.*” However there is no description of the house nor is the house number indicated. In addition, the document has two dates, being 10th March, 2017 and 10th December 2017 such that it is difficult for the Court to ascertain, when the agreement was executed.

In the case of **Hilary Bernard Mukosa V Michael Ronaldson**⁽²⁾ it was held that:

“an injunction will only be granted to a Plaintiff who established that he has good arguable claim to the relief he seeks to protect.”

In this case and given the above facts, the Plaintiff has not established that he has an arguable claim and the right to relief is clear as alluded to in the case of **Shell and BP (Z) Ltd V Conidarius and Others**⁽³⁾.

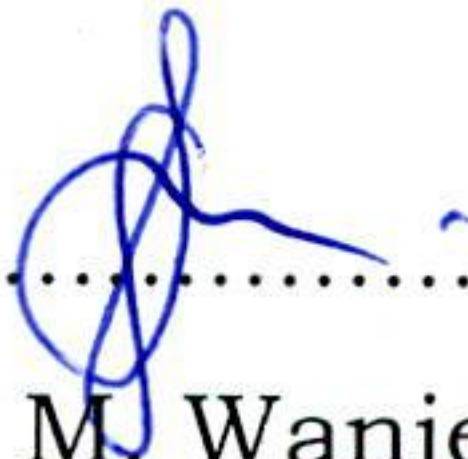
The Plaintiff has also not demonstrated what irreparable injury he will suffer if the injunction is not granted, especially that it was not the sale of the particular property itself that was involved. I am fortified in my view by the holding in the case of **Jane Mwenya and Another V Paul Kapenga**⁽⁴⁾ where the Supreme Court held inter alia that:

“The law takes the view that damages cannot adequately compensate a Party for breach of the contract for sale of an interest in a particular piece of land or of a practice house however ordinary.”

I therefore, find that damages would be adequate remedy for any loss that the Plaintiff might incur.

Taking into account all these findings and the principals to be considered when granting injunctions, I find that this is not an appropriate case in which I can exercise my discretion to grant an Interim Order of Injunction. The application is consequently dismissed and I make no Order on costs.

Delivered at Lusaka this 14th day of May, 2018.



S. M. Wanjelani
HIGH COURT JUDGE