

IN THE COURT OF APPEAL OF ZAMBIA APPLICATION NO. 5/2021

HOLDEN AT LUSAKA

(Civil Jurisdiction)



BETWEEN:

AYUB FAKIR MULLA

1st APPLICANT

ZABUNISA ISMAIL MULLA

2nd APPLICANT

LINK PHARMACY LIMITED

3rd APPLICANT

AND

FIRST NATIONAL BANK ZAMBIA

1st RESPONDENT

FIRSTRAND BANK LIMITED

2nd RESPONDENT

CORAM: Chashi, Sichinga and Ngulube, JJA

ON: 8th and 23rd April 2021

*For the Applicants: M. Nkulukusa and M. Bah, Messrs Nkulukusa and
Company*

*For the Respondent: S. Chisenga and M. Nachinga, Messrs Corpus Legal
Practitioners*

R U L I N G

CHASHI JA, delivered the Ruling of the Court.

Cases referred to:

1. **Mobil Zambia Limited v Msiska (1983) ZR, 86**
2. **Zimco Properties Limited v Lapco Limited (1988 - 1989) ZR, 92**

Rules referred to:

1. **The Court of Appeal Rules, 2016**

This is a renewed application for an interim injunction, brought pursuant to Order 7, Rules 1 and 2 of **The Court of Appeal Rules**¹ following the refusal of a single Judge of the Court who on 2nd December 2020 declined to grant the Applicants an interim injunction.

The background to this matter is that, the Applicants had commenced an action in the High Court seeking a declaration that the Respondent sold the properties belonging to Courtyard Hotel Limited to an inferior bidder at a deflated price. The Respondents disposed of the properties in 2016.

The Applicants sought an *ex parte* order of an injunction which was granted pending the *inter-partes* hearing.

On 28th August 2020, a ruling was delivered, in which the application for an injunction was dismissed and the *ex parte* Order for an injunction discharged.

Dissatisfied with the ruling, the Applicants renewed the application before a single Judge of this Court, who equally dismissed the application.

This is what prompted the Appellant to renew the application before us, seeking to vary or reverse the decision of the single Judge of this Court.

According to the Applicants, they have an arguable case in the High Court and a clear right to relief. That they have also demonstrated that they may suffer irreparable damage which cannot be atoned for by way of damages.

Further that the balance of convenience lies in the Applicants' favour. The Applicants contend that this is a proper case for granting the application.

The application is opposed by the Respondents. According to the Respondents, the Applicants have not shown that irreparable damage will be done if the application is not granted. Further that, they have not demonstrated that the balance of convenience lies in their favour if the Respondents proceed to execute Judgment.

- We have considered the affidavit evidence, the arguments by the parties
- and the record before us. In the case of **Mobil Zambia Limited v Msiska**¹ the Supreme Court held that:

“In considering whether or not an injunction should be granted, a most important consideration is whether or not damages are an adequate remedy... A court will not generally grant an interlocutory injunction unless the right to relief is clear and unless the injunction is necessary to protect the plaintiff from irreparable injury; mere inconvenience is not enough. Irreparable injury means injury which is substantial and can never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired.”

It is clear from the aforestated case that the court in exercising its discretion will only grant an injunction if the right to relief is clear and the injunction is necessary to protect the Applicants from irreparable injury which cannot be atoned for by damages.

What that means is that, even if the Applicant has an arguable case and the right to relief is clear, the court will not grant an injunction where

- damages would be an adequate remedy to the injury complained of if the
- Applicants succeed in the main cause.

We note that apart from alleging that they would suffer irreparable injury, the Applicants have not shown what irreparable injury they will suffer which cannot be atoned for by damages if the injunction is not granted.

They have further not shown in the circumstances of the case at hand, that damages would likely not be sufficient.

In our view, although the Applicants have an arguable case in the court below, the alleged injury to be suffered herein can be atoned for by damages.

Coming to the issue of the question of balance of convenience, the Supreme Court in the case of **Zimco Properties Limited v Lapco Limited**² made it very clear as to when it is applicable, when they stated as follows:

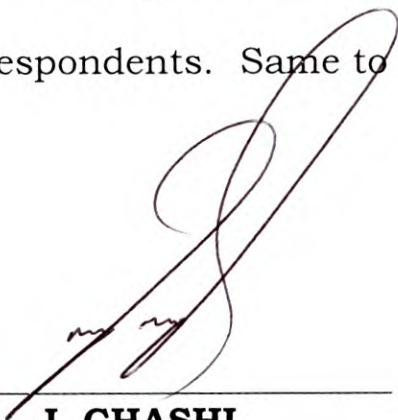
“We must make it clear that the question of balance of convenience between the parties only arise if the harm done will be irreparable and damages will not suffice to recompense the plaintiff for any harm which may be suffered as a result of the actions of the defendant which it is sought to restrain. It is therefore inappropriate in this

case to discuss the question of balance of convenience. It is clear to us that if the plaintiff is successful in its action, it will be adequately compensated by an award of damages.

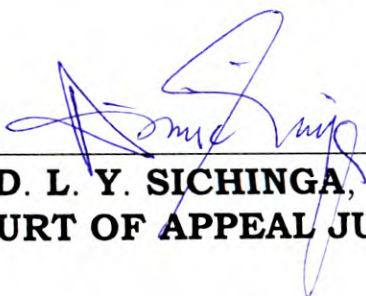
In the circumstances therefore, the granting of an injunction was improper and this appeal must succeed.”

Having found that no irreparable injury will be suffered by the Applicants if the interim injunction is not granted as damages would be an adequate remedy, the issue of balance of convenience between the parties does not arise.

In view of the aforestated, we find no basis on which to vary or reverse the decision of the single Judge. The application before us is accordingly dismissed with costs to the Respondents. Same to be taxed in default of agreement.



J. CHASHI
COURT OF APPEAL JUDGE



D. L. Y. SICHINGA, SC
COURT OF APPEAL JUDGE



P. C. M. NGULUBE
COURT OF APPEAL JUDGE