

IT

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



2023/HP/1843

Between:

GREENSTONE KALUBA MAIWASE

1ST PLAINTIFF

ELIOT MZIZI (Power of Attorney for ESTHER SMART NJOVU)

2ND PLAINTIFF

AND

SUSAN NJOVU

DEFENDANT

BEFORE HON. MRS. JUSTICE G.C. CHAWATAMA
ON 05TH JUNE, 2024 - IN CHAMBERS

For the 1st & 2nd Plaintiffs : Mr. P. Sikazwe – Legal Aid Board
For the Defendant : In Person

RULING

CASES REFERRED TO:

1. *Tau Capital Partners Inc. and Corpus Glove Nominees Limited v Mumema Mushingwe, Zampost Limited and Terra Gold (Barbados) Inc.* 2008 ZR 179
2. *Gasden Coltage Food Limited v Milk Marketing Board* 1983 2 ALL ER 770.
3. *Ndove v National Education Council Limited* (1980) ZLR 184
4. *Shell and BP Zambia Limited v Conidaries & Other* (1975) ZR 174
5. *ZIMCO Limited v Lapco Limited* (1988/89) ZLR 92
6. *Preston v Luck* (1884) 27 CD 497
7. *Tommy Mwandalema v Railway Board* (1978) ZR 65

AUTHORITIES WORKS REFERRED TO:

1. Paragraph 766 of Halsbury's Laws of England Third Edition, Volume 21

This action was commenced by way of Writ of Summons accompanied by a statement of claim dated the 19th October, 2023. The Plaintiff claims the following;

1. *Vacant possession of the property Lot No. S/Lusaka/SLN0026/815 Lilanda, Lusaka.*
2. *A declaration that the 1st Plaintiff is the purchaser and rightful owner of Lot No. S/Lusaka/SLN0026/815 Lilanda, Lusaka.*
3. *Rentals collected by the Defendant amounting to K6, 300.00.*
4. *Interim injunction restraining the Defendant from collecting any rentals from the tenants occupying houses on the property Lot No. S/Lusaka/SLN0026/815 Lilanda, Lusaka.*
5. *Interest*
6. *Any further or other relief that this may deem fit.*

Filed on the 27th October, were summons for an order for an interim injunction as well as an affidavit in supposed deposed to by the Plaintiff Greenstone Kaluba Maiwase. He deposed as follows:

1. *That the 1st Plaintiff did purchase the property Lot No. S/Lusaka/SLN0026/815 Lilanda, Lusaka from one Esther Smart Njovu on 27th July, 2023 produced and marked "GSKM 1" is the copy of sales agreement.*
2. *That since the purchase of the property in question the defendant being aware of the said sale has refused to vacate the said property claiming it belong to the late Simukange Smart Njovu her late father when after the death of the late properties were shared among the children and she was allocated a house while the widow to the late was allocated the property in question who is the title holder produced and marked "GSKM 2" is a copy of the certificate of title.*
3. *That efforts to have the defendant vacate the property have proved futile as the defendant is aggressive, and abusive, produce and Marked "GSKM 3" is a video copy of the aggressive nature of the defendant.*
4. *That the defendant has been collecting rentals from the tenants on the property, hence depriving the 1st plaintiff from benefit of said property which he purchased, that the defendants be restrained from further collecting any rentals and that the said rentals be paid into Court.*

5. *That unless restrained by an interim-injunction the Defendant will continue to profit at the expense of the 1st Plaintiff she continues to dwell in the property in question herein.*
6. *That due to the conduct of the defendant the 1st Plaintiff contractors have been unable to move on the property as a result they contractors are threatening to cancel the contract with the 1st Plaintiff, which will cause the 1st Plaintiff to incur further losses if he does not meet his obligation.*
7. *That in the interest of justice that I now apply to this Court to grant an Order for interim-injunction restraining the Defendant or her agents from collecting rentals from tenants on property Lot No. S/Lusaka/SLN0026/815 Lilanda, Lusaka and the said rentals be paid in court and temporary vacant the house she's currently living located on property Lot No. S/Lusaka/SLN0026/815 Lilanda, Lusaka until the substantive matter before this Honourable Court is concluded.*

A list of authorities and Skeleton Arguments were also filed. The Court was referred to **Order 27 Rule 4 of the High Court Rules, Chapter 27 of the Laws of Zambia.**

It was submitted that the objects of an interlocutory injunction as was held in the case of **Turnkey Properties v Lusaka West Development Limited and Zambia State Insurance Corporation Limited (1984)ZR 85(SC)** that is to maintain the status quo, for the preservation or restoration of a particular situation pending trial so that if at the hearing the Plaintiff obtain a judgment in their favor the Defendant will have prevented from dealing in the mean-time with the subject matter in such a way as to make that Judgment ineffectual.

I was referred to other to other cases much as the **Tau Capital Partners Inc. and Corpus Glove Nominees Limited v Mumema Mushinge, Zampost Limited**

*and Terra Gold (Barbados) Inc. 2008 ZR 179*¹ among other cases where it was stated that:

“The object and principles that govern the grant of an interlocutory injunction were summarized;

That to be entitled to the grant of injunction, the Plaintiff must prove to the Court the following:

- a) That he has a right.***
- b) That he will suffer irreparable damage in the event that the injunction is not granted.***
- c) That he will suffer irreparable damage in the event that the injunction is not granted.***
- d) The balance of convenience and nature of injury to the Defendant”.***

I was referred to the case of *Shell BP Zambia Limited v Conidaris and Others (1975) ZR 174*. I was also referred to *Gasden Coltage Food Limited v Milk Marketing Board 1983 2 ALL ER 770*.²

Lastly, I was referred to *paragraph 766 of Halsbury’s Laws of England Third Edition, Volume 21* which states that:

“The court, in determining the balance of convenience to the parties and the nature of the injury which the defendant, on the one hand, would suffer if the injunction was granted if he should ultimately turn out to be right and that which the plaintiff, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right.”

It was the intention of the Court to hear the application inter parte however, the defendant did not attend Court. The matter was adjourned. The application was to be heard on the 9th November, 2023. The Court was informed that the defendant was informed of the hearing date. That she refused to sign the papers served on her. An affidavit of service was filed on the 8th November, 2023. On the 9th November, 2023, the Court advised the 2nd Plaintiff Elliot Mzizi to produce the power of Attorney that he referred to and the medical report of Esther Smart Njovu. The matter was adjourned to the 1st December, 2023.

When the matter came up Elliot Mzizi produced a prescription slip instead of a medical report.

The Court was not satisfied because the court had specifically asked for a medical report. On the 28th November, 2023, Elliot Mzizi filed ex-parte summons for an Order for Leave to register/file the power of Attorney out of time pursuant to **Order III Rule 2 of the High Court Rules Chapter 27 of the Laws of Zambia**. Accordingly, to the 2nd Plaintiff, he was denied to file the power of Attorney at the Ministry of Lands because the time within which to file power of Attorney which was obtained on the 21st August, 2023 had elapsed.

In the meantime, the 2nd Plaintiff filed a medical report from Pilgrim Wesleyan Church Zimba Mission Hospital in Zimba in which it was stated that Esther Smart Njovu a female aged 59 was diagnosed

with Hypertension and diabetes which she has been battling with for fourteen (14) years. Further that in 2022 she suffered a stroke which affected her speech and movement.

Another medical report for Esther Njobvu female whose age was 61 stated that she was admitted at Levy Mwanawasa Teaching University with effect from 7th August to 14th August, 2023. That she was managed as a case of Sepous Focus Pneumonia and Urinary Tract Infection in a knowing Diabetic Mellitus and Hypertensive Patient, attached was laboratory results for ease of reference.

A quick glance of the laboratory results shows that the effective date was the 20th April, 2021.

The principles for the award of an injunction are well settled. In the case of *Ndove v National Education Council Limited (1980) ZLR 184*,³ the Court held that:

“Although the Court is not called upon to decide finally on the rights of the parties, it is necessary that the Court is satisfied that there is a serious question to be tried at the hearing and on the facts before it is a probability that the plaintiff is entitled to the relief “

This is the principle that was laid down in the case of *Shell and BP Zambia Limited v Conidaries & Other (1975) ZR 174*:⁴

“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.”

In the case of ***Nottingham Building Society v Eurodynamic Systems (1993) LSR 468***, the Court highlighted that the balance of convenience is weighting the scale between the parties. The test may be expressed in terms where the Court has to decide whether the risk of injustice if the injunction is refused out weights the risk of injustice if the injunction is granted. The Court in the case of ***ZIMCO Limited v Lapco Limited (1988/89) ZLR 92***;⁵

“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”

An old principle in injunction is to maintain the status quo where any injury cannot be atoned for by an award of damages. This is what was stated in an old case of ***Preston v Luck (1884) 27 CD 497***,⁶ in which the Court held as follows:

“To keep things in status quo so that if at the hearing the plaintiff obtains a judgment in their favour, the defendant would have been

prevented from dealing in the meantime with the property in such a way as to make that Judgment ineffectual.”

In the case of *Tommy Mwandalema v Railway Board (1978) ZR 65*,⁷ the court held that:

“... the object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at trial.”

I am inclined to grant this injunction. The application for an interim injunction is hereby granted to preserve the status quo. The balance of convenience weighs more on my granting the injunction. However, money from the rentals is to be paid into Court. Having granted the injunction this will be until full determination of the matter or further order of the Court.

DELIVERED AT LUSAKA THIS 05TH DAY OF JUNE, 2024.



**G.C. CHAWATAMA
HIGH COURT JUDGE**