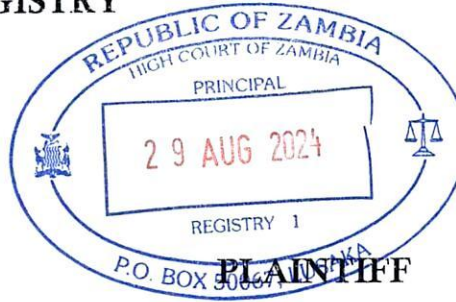


IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2023/HP/2084



BETWEEN:

ANDREW CHILAMBO

PLAINTIFF

AND

PATRICK KAYEMBE

DEFENDANT

Before: Honourable Lady Justice C. Chinyanwa Zulu

For the Plaintiff: In Person

For the Defendant: In Person

RULING

CASES REFERRED TO:

1. Ubuchinga Investments Limited v Teklemicael Menstab and Semhar Transport and Mechanical Limited SCZ Judgment No. 25 of 2014;
2. American Cyanamid Co. v Ethicon Co. Ltd [1977] AC 396;
3. Airtel Holdings Limited, Airtel Limited, Airtel High Definition and Television Limited v Patents and Companies Registration Agency and Bharti Airtel Developers Forum Limited;
4. Harton Ndove v National Educational Company of Zambia Limited (1980) ZR 184;
5. Shell and B.P Zambia Limited v Conidaris and Others (1974) Z.R 281;
6. ZIMCO Properties Limited v LAPCO Limited (1988-89) Z.R 92;
7. Tito v Waddell No. 2 (1977) Ch. D 106;
8. Gideon Mundanda V Mulyani & Others;

LEGISLATION AND OTHER WORK REFERRED TO:

1. The Rules of the Supreme Court of England, 1999 Edition.
2. High Court Rules, Chapter 27 of the Laws of Zambia.

The delay in delivery of this Ruling is regretted.

1.0 BACKGROUND AND CONTEXT

1.1 This is a ruling on the Plaintiff's application for an Interim Injunction Order to restrain the Defendant either by himself, his agents, servants and whomsoever from evicting the Plaintiff from the farmhouse, trespassing, harassing, intimidating and/or tempering with the crops planted on Farm No. Sub 7/B/288A, Makeni Konga until final determination of the whole matter or any such further order. The application is made by way of Summons pursuant to Order 29 Rule 1 of the Rules of the Supreme Court, 1999 Edition, Volume 1 (**RSC**).

1.2 The brief background of this matter is that the Plaintiff commenced this action on 21st November 2023 by way of Writ of Summons and a Statement of Claim seeking the following reliefs:

- i. A declaration that the notice of eviction issued by the Defendant on the Plaintiff has no legal basis, illegal, null and void;**
- ii. A declaration that the Defendant compensates the Plaintiff for all the investments pumped in the project and projected income from the farm produce planted on the land, or;**
- iii. In the alternative, order the Defendant to give the Plaintiff enough time to enable Plaintiff harvest and sale all the crops on this farm;**
- iv. An order of interim injunction restraining the Defendant either by himself, his agents, servants and whosoever from evicting the Plaintiff from the farmhouse, trespassing, harassing, intimidating and/or tempering with all the crops planted on the farm otherwise known as farm number sub 7/B/288A, Makeni Konga until final determination of the whole matter or any such further order of this Honourable Court.**
- v. Costs and any other relief the Court may deem fit.**

1.3 The Summons is supported by an Affidavit deposed by the Plaintiff herein. The contents of the Affidavit are that on or before 10th March 2023, the Defendant advertised the subject farm on social media for

lease, to occupy and carry out agricultural activities. The Plaintiff got interested and upon inspecting the farm, the parties entered into a lease agreement following what seemed to be a fruitful discussion. The Plaintiff averred that during the said discussion, he explained in detail to the Defendant the nature of the farming activities he intended to undertake on the farm. That the Defendant strongly assured him that the farm had not been in use for a couple of years and that he had no plans of using it in the near future.

- 1.4 The Plaintiff went on to aver that when the Defendant produced what purported to be a lease agreement on 10th March 2023, he hinted to the Defendant that the lease agreement he had prepared was vague and did not include the specifics they had discussed. That the Defendant agreed to redo the lease agreement and suggested that for purposes of acknowledging the money paid, they sign on the said document. That the Defendant said he would engage an expert to prepare the lease agreement to the required standard. That based on mutual trust, the Plaintiff went ahead and signed the defective lease agreement.
- 1.5 The Plaintiff averred that thereafter, he proceeded to clear the land as it was largely a thicket and ploughed it in readiness for planting at a cost of K15,000.00. Further, that he purchased farming requirements which included seedlings and seeds at a cost of K15,000.00, fertilizer at a cost of K7,000.00, composite manure at a cost of K3,000.00, agriculture chemicals at a cost of K 6,000.00, and irrigation sprinklers, irrigation stands and sprayers at a cost of K41,595.00. That he purchased these items on credit on the understanding that he would pay back with interest.
- 1.6 He went on to aver that sometime in April 2023, he planted sweet potatoes, over 5,000 cabbages, carrots, pumpkins, spinach, chili,

garden eggs, egg plants, water melons, maize, tomatoes and okra which crops have an estimated total income of K759,900.00 per year once fully harvested. That all was going well until the Defendant suddenly started frequenting the farm. The Defendant begun going there with different people including his children to trespass on the crops without prior notice. When he asked the Defendant why he was doing this, his response was that he wanted them to appreciate what the Plaintiff was doing.

1.7 He averred that on 28th July 2023, the Defendant went to the farm and asked the Plaintiff to take him through the farm. The Defendant proceeded to inform him that he should vacate the farmhouse as he wanted to occupy it because he had sold the house he was living in. That the Defendant went further to give him three (3) options to choose from as follows:

- i. **To find a house elsewhere and just go to the farm to tend to the crops;**
- ii. **To vacate the farmhouse and move into the unfinished quarters without a floor, windows and toilet; and/or**
- iii. **To pay 6 months in advance so that the Defendant could complete the unfinished structure on the farm so that he could move in there.**

1.8 He went on to aver that he asked the Defendant to give him time to think about the options given. That he later called for a meeting with the Defendant where he declined to take any of the options as that was not what was agreed upon in the first place. Further, that it was not possible for him to be commuting from elsewhere to tend to the crops as he needed to do proper irrigation in the night and early in the morning. He asked the Defendant to compensate him for both his investment and the anticipated profit on the farm produce which stood at K823,495.00 if he wanted to terminate the lease.

- 1.9 He went on to state that the Defendant became visibly annoyed and, in his anger, informed the Plaintiff that he only accepted and allowed him to occupy the farm because he was desperate for money. That the Defendant ordered him to vacate the farmhouse by 15th November, 2023 and refused to listen to reason and at least give him a year to harvest his crops considering that in their mutual discussion, they had agreed on a much longer lease.
- 1.10 The Plaintiff averred that on 21st October, 2023, the Defendant gave him an eviction notice to vacate the farm by 15th November, 2023 and to stop planting new crops. The reason given in the notice was that the Defendant wanted to occupy the house. The Plaintiff stated that he found the Defendant's actions highly unreasonable, immoral, inhuman, unheard of, and against the law and as such null and void. That the Defendant's actions were motivated by greed upon realizing that the Plaintiff would raise a lot of money from the abandoned piece of land.
- 1.11 He went on to state that on 17th November, 2023 at about 19:00 hours, the Defendant with a group of drunken hoodlums forcefully entered the house and started removing household items from the bedroom and sitting room. Some household items were damaged in the process and when he tried to stop them, they assaulted him in full view of his wife and children prompting him to rush to the police to report them for assault, criminal trespass, and malicious damage to property.
- 1.12 He averred that he had invested heavily in the farm project and had projected good profit. That should the Defendant be allowed to forcefully cut short his investment by evicting him from the farmhouse, this would amount to evicting him from the farm as it would not be possible for him to find alternative accommodation away from his

crops which need serious attention and care. That such a situation would result in him incurring great loss hence this application for an order of interim injunction. That in the event that this Court does not grant him an interim injunction order, he would suffer irreparable damage as the crops on the farm would be destroyed on account of lack of proper attention and the whole action would be rendered an academic exercise.

1.13 Based on the foregoing the Plaintiff seeks the indulgence of this court to grant him an order of interim injunction restraining the Defendant either by himself, his agents, servants, and whosoever from evicting him from the farm house, trespassing, harassing, intimidating and/or tempering with the crops planted on Farm No. Sub 7/B/288A, Makeni Konga until final determination of the whole matter or any such further order of this Honourable Court. Further, he also seeks an order for costs and any other relief this Court may deem fit.

2.0 SKELETON ARGUMENTS IN SUPPORT

2.1 The Plaintiff began by restating his Affidavit evidence. He went on to refer the Court to Section 5 (1) and (2) of the Landlord and Tenant Business Premises Act, Chapter 193 of the Laws of Zambia which provides as follows:

5.(1) The landlord may terminate a tenancy to which this Act applies by a notice given to the tenant in the prescribed form specifying the date on which the tenancy is to come to an end (hereinafter referred to as "the date of termination"):

Provided that this subsection shall have effect subject to the provisions of section *twenty-three* as to the interim continuation of tenancies pending the disposal of applications to the court.

(2) Subject to the provisions of subsection (3), a notice under subsection (1) shall not have effect unless it is given not less than six months and not more than twelve months before the date of termination specified therein.

- 2.2 He argued that the Defendant did not specify any date of termination in what he termed as a defective lease agreement notwithstanding a prior agreement that the lease would be for 12 months considering the nature of the business. That be as it may, the Defendant's notice of termination of the lease agreement falls far short of the required standard. He urged this Court not to entertain it stating that the Defendant deliberately duped, crooked, and misled the Plaintiff into signing a defective lease agreement with assurance that he would prepare a document containing what was discussed and agreed upon.
- 2.3 It was argued that it was for obvious reasons that the Plaintiff and Defendant agreed to a twelve-month lease period. This being that the growing and harvesting of crops cannot be done in a period of less than 6 months and that other crops remain profitable with proper care for more than 12 months. Therefore, that the agreed period of 12 months would enable him to harvest and realize profits to pay the creditors he owed for the farm implements.

3.0 AFFIDAVIT IN OPPOSITION

- 3.1 The application is opposed by the Defendant by way of an Affidavit in Opposition filed into Court on 22nd November 2023. The Affidavit was deposed by Patrick Kayembe, the Defendant herein. He deposed that he did not advertise the farm for rent but rather, that it was only the farmhouse which was advertised for rent. A purported copy of the advert on Facebook was exhibited marked "PK1". He went on to aver that it is actually the Plaintiff that dictated the terms of the lease agreement and went on to sign it.

- 3.2 The Defendant denied the assertion that the land was largely a thicket and that the Plaintiff had to clear it for ploughing. He averred that the land in question was already cleared and had people cultivating on it.
- 3.3 He denied going to the farm to inform the Plaintiff to vacate it. Rather, that he gave the Plaintiff a verbal notice of eviction. Further, he denied the assertion that one of the three options given to the Plaintiff to govern their contractual relationship going forward required the Plaintiff to pay 6 months in advance. It is his position that the Plaintiff was told to pay only 2 months in advance, which he did. Further, that the Plaintiff accepted one of the three options given to him which was to move into a smaller house on the farm and remain closer to his crops.
- 3.4 The Defendant averred that it is actually the Plaintiff's behaviour that is unreasonable as his conduct exhibits crookedness. In this regard, that the Plaintiff is only being evicted from the house and not the land he has been lent to cultivate on.
- 3.5 The Defendant denied the Plaintiff's assertions that when he was evicted from the house the Defendant was in the company of his 2 sons and 2 of his friends who were there to witness the eviction. He averred that the Plaintiff was not assaulted and there was no damage to his property. The Defendant reiterated that the Plaintiff was only being evicted from one farmhouse to move to another if he so wished and not from the farm. Therefore, that the Plaintiff would not suffer irreparable damage as he would still be near his crops even after changing farmhouses. He prayed that this Court deny the Plaintiff's application as he had not demonstrated interest in the Defendant's farm nor how he would suffer irreparable damage if he moved from one farmhouse to another. Further, that costs be in the cause.

4.0 AFFIDAVIT IN REPLY

- 4.1 The Plaintiff filed an Affidavit in Reply on 4th December 2023. It was deposed by Andrew Chilambo the Plaintiff herein. The said Affidavit largely rehashes the contents of the Affidavit in Support of the application. He averred that the Defendant advertised his farm with a 3-bedroomed house and that even the sketch lease agreement indicates usage of the rented property as farming. That this is what aroused his interest as he wanted to venture into farming. Further, that he placed his own house on rent before moving into the farmhouse because he wanted to rent a farm with a house in order for him to be close to the crops.
- 4.2 The Plaintiff maintained that the Defendant prepared the lease document and that he only disputed the contents as being scanty which prompted him to request the Defendant to prepare a fresh document and the Defendant agreed to do so. He went on to aver that he signed the document given to him out of respect and mutual trust stating that the Defendant's age gave him assurance that he was up to no harm.
- 4.3 The Plaintiff also maintained that the farm was largely bushy and only a small portion had what seemed to be a garden used by one of the caretakers living in the unfinished structures. Further, that he declined all the Defendant's options because it did not make sense for him to find accommodation elsewhere and leave the crops in the hands of the Defendant who had already shown reckless behaviour, arrogance and could even damage the crops in order to get rid of the Plaintiff. Secondly, that he could not move into an uninhabitable structure that had no running water or toilet and whose pit latrine was covered with worn out sacks and full to the brim. He urged this Court not to tolerate this kind of behaviour from landlords.

4.4 The Plaintiff went on to aver that the incident of assault and malicious damage to property was reported at Makeni Police Station where a medical report was issued. He exhibited a copy of the medical report marked "AC4". He maintained that the Defendant's intention was to evict him as it was both unreasonable and inhumane to claim that he is only evicting him from one house to another when the other house is uninhabitable by all standards. He deposed that he would suffer irreparable damages if the Defendant is allowed to do so. That this Court should grant him an interim injunction restraining the Defendant from evicting him from the farm pending final determination of the whole matter.

5.0 HEARING

5.1 The matter came up for hearing on 5th December 2023. The Plaintiff informed the Court that he would be relying on the documents filed into Court and proceeded to briefly augment the same. The Plaintiff told this Court that he made the present application because he was unhappy with the way he was almost evicted from the farmhouse. He stated that at the time of the hearing, his goods were outside and that he was only occupying 2 bedrooms of the house while the Defendant was occupying the rest of the rooms.

5.2 He went on to state that he has not moved out of the farmhouse because he was not given sufficient notice to vacate. That he was only given 25 days' notice as opposed to the 3 months' notice period stated in the lease agreement. Further, that the lease agreement states that one can only terminate when there is a conflict. That the parties did not have a conflict rather, the Defendant just wanted to occupy the house. That this can be seen from the eviction notice which indicates the reason for the eviction as being, the Defendant wanting to occupy the house.

- 5.3 He stated that he and his family were traumatized. That the Defendant entered the Plaintiff and his wife's bedroom and removed everything including their undergarments and threw them outside in full sight of his children.
- 5.4 He further summed up the basis for the application as being the crop in the fields that needed tending which includes watering at night as they were not yet ready and the loans he needs to service from the crop harvest.
- 5.5 In response, the Defendant stated that what he advertised was the 3-bedroomed house on the farm. That when the Plaintiff responded to the advert, he informed him that the house that his former wife and children were living in was being sold and that as soon as it was sold, he would need to move into the farmhouse. That the Plaintiff proceeded to inform him that he was also interested in farming. The Defendant stated that in response he informed the Plaintiff that he had no objection to the Plaintiff farming as he had no immediate use for the land.
- 5.6 The Defendant went on to state that the house was sold on 24th July 2023. He stated that in the lease he entered into with the Plaintiff they did not agree on the duration of the lease. That they only agreed on the notice period of 3 months. He went on to state that on 28th July 2023, he informed the Plaintiff that he had sold the house and that the Plaintiff should move out by 28th October 2023. In response, the Plaintiff told him that he needed to be near the crops to which the Defendant informed him that he could either find alternative accommodation near the farm or live in another building on the farm. That he informed the Plaintiff that he could complete a building on the farm if the Plaintiff paid him 2 months' rent in advance as agreed in the

lease agreement. That the Plaintiff agreed to this proposal and in August he paid him rent for 2 months in advance for August and September.

- 5.7 He went on to state that on 10th October 2023 when the Plaintiff was expected to make the next payment, the Plaintiff resisted to do so. That the Plaintiff called the Defendant several times requesting to see him. That on 20th October 2023 the Defendant went to see the Plaintiff and this is when the conflict started. The Plaintiff complained to the Defendant that too many people were going to the farm and that the Defendant does not pay him for the water he uses when he goes to the farm. The Plaintiff also asked the Defendant whether he was aware that his visits to the farm amounted to trespass. The Defendant in response reminded the Plaintiff that he was given an eviction notice and that the Defendant needed to move in the farmhouse because he had also been given 3 months' notice at the other house. That he further informed the Plaintiff that the written notice he had given him on 21st October 2023 was simply an extension of the earlier notice. The Defendant stated that the Plaintiff had not paid rent from 10th October 2023 to date.
- 5.8 The Defendant went on to state that on 15th November 2023 the parties had a meeting where he informed the Plaintiff to move to the other house. That contrary to the house exhibited, the said house has a floor, doors, and water provision. That the only thing missing, which he would have bought had the Plaintiff paid him, are toilets and windows. The Defendant stated that he has nowhere to live and cannot give his property as charity. That he needs his rentals as he does not work. He prayed that the exparte injunction be discharged.
- 5.9 In reply, the Plaintiff denied the assertion that the Defendant informed him that he would go and live at the farm upon selling the house. He

stated that farming is a long-term project and that had he been informed, he would not have moved onto the farm. He further denied the assertion that he was given notice of eviction on 28th July. Rather that on the said date, the Defendant simply went to the Plaintiff's home with 2 of his children and informed the Plaintiff that he wanted to inspect the fields. That whilst doing this, the Defendant informed him that he intended to go and live at the farm. The Plaintiff stated that the Defendant said he was giving him 2 weeks within which to decide whether to vacate the house and find alternative accommodation elsewhere and only go to the farm to tend to the crops or move to an unfinished house on the farm. That, however, the rentals would remain the same. He submitted that the said other house on the farm lacked basic amenities. Upon thinking about the options, he informed the Defendant on 8th August 2023 that he would follow what was in the lease. That he would pay him K5000 as 2 months' rent to which the Defendant agreed.

- 5.10 The Plaintiff went on to state that following this, the Defendant started going to the farm almost daily to work on the house. During these times he would pass through the Plaintiff's crops with many people taking photos and getting some of his crop. The Defendant would also switch off the water supply which led to the crops not being watered. That on account of all this, he requested the Defendant for a meeting on 20th October 2023 to find a way to resolve their problems. That the Defendant's response was that he had no authority to summon him and that he should move out. On 21st October the Defendant served the Plaintiff with an eviction notice.

5.11 The Plaintiff stated that he pleaded with the Defendant to give him time to harvest his crop but to no success as he later came to remove his belongings from the house.

6.0 DECISION

6.1 I have seriously considered the application together with the affidavit evidence before me and the arguments advanced by the parties. The main issue for determination is whether or not I should grant the Plaintiff an interim injunction to restrain the Defendant either by himself, his agents, servants, and whoever from evicting him from the farmhouse, trespassing, harassing, intimidating and/or tempering with the crops planted on Farm No. Sub7/B/288A, Makeni Konga.

6.2 The jurisdiction vested in this Court to grant interim injunctions is a discretionary one. I'm fortified by the Supreme Court's decision in the case **Ubuchinga Investments Limited v Teklemicael Menstab and Semhar Transport and Mechanical Limited**. As with any other discretionary power vested in this Court, it ought to be exercised judiciously and for good and compelling reasons.

6.3 The principles upon which an interlocutory injunction can be granted are well settled. The English case **American Cyanamid Ethicon Ltd** is instructive in this regard and has been adopted in a plethora of cases in this jurisdiction. I have endeavored to reproduce a portion of the judgment. Lord Diplock whose judgment the House of Lords unanimously agreed with held as follows:

The use of such expressions as "a probability," "a prima facie case," or "a strong prima facie case" in the context of the exercise of a discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this form of temporary relief. The court no doubt must be satisfied

that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried.

It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial. One of the reasons for the introduction of the practice of requiring an undertaking as to damages upon the grant of an interlocutory injunction was that "it aided the court in doing that which was its great object, viz. abstaining from expressing any opinion upon the merits of the case until the hearing": *Wakefield v. Duke of Buccleugh* (1865) 12 L.T. 628, 629. So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

As to that, the governing principle is that the court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage. If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction.

It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises. It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the

balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.”

6.4 In the case **Airtel Holdings Limited, Airtel Limited, Airtel High Definition and Television Limited v Patents and Companies Registration Agency and Bharti Airtel Developers Forum Limited** Judge Matibini, as he then was, aptly summarises the series of questions/principles enunciated in the **American Cyanamid** case as follows:-

“The celebrated case of *American Cyanamid* (supra) is renowned, through Lord Diplock, for developing a series of questions which are widely used to calibrate whether or not an interim injunction should be granted in a particular case. The questions may be summarized as follows:

- a) the first and primary question is to establish whether or not there is a serious question to be tried.
- b) Assuming that there is a serious question to be tried, the Court must proceed, to consider the question of the inadequacy of damages to either side. That is, the Court should go on to consider whether if the claimant were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant’s continuing to do what was sought to be enjoined between the time of the application, and the time of the trial. If damages would be an adequate remedy and the defendant would be in a financial position to pay them, no interim injunction should normally be granted, however strong the claimant’s claim appeared to be at that stage. (*American Cyanamid* at 408 – B – C)
- c) It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both that the question of balance of convenience arises. (*American Cyanamid* at 408 E). The question of balance of convenience is considered in three stages. As follows:
 - i) First, if the applicant would be adequately compensated by an award of damages if he succeeded at trial, then no injunction should be granted however strong the applicant’s case. As stated earlier on, this is the most important consideration in the exercise of the discretion to grant or not to grant an interim injunction.
 - ii) Second, assuming the claim survives the hurdle referred to above, the Court must then consider whether if an interim injunction is granted, but the defendant succeeds at trial, the defendant would

be adequately compensated in damages, which would then have to be paid by the applicant.

- iii) Third, if there is doubt as to the adequacy of damages available to either or to both, the Court must then consider the wide range of matters which go to make up or tilt the balance of convenience. These include the need to maintain the status quo, relative strength of cases, and special factors.
All said and done, it is therefore essential for an applicant for an interim injunction to clearly demonstrate that he would suffer substantial prejudice or hardship in a material respect if he were confined to an award of damages.”

6.5 In the case of **Harton Ndove v National Educational Company of Zambia Limited** Chirwa J, as he then was, held that in an application for an interlocutory injunction, though the Court is not called upon to decide finally on the rights of the parties, it is necessary that the Court should be satisfied that there is a serious question to be tried at the hearing, and that on the facts before it there is a probability that the applicant is entitled to relief.

6.6 The Supreme Court’s decision in the case **Shell and B.P Zambia Limited v Conidaris and Others** is instructive on the nature of injury that has to be proven by an applicant to warrant the grant of an interim injunction. This is irreparable injury, that is, injury which is substantial and can never be adequately remedied or atoned for by damages. Further, regarding the balance of convenience, the Supreme Court in the case of **ZIMCO Properties Limited v LAPCO Limited** held that:

“The question of balance of convenience between the parties only arises 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.”

6.7 From the foregoing authorities it is clear that the determination of an application for an interim injunction does not involve consideration of

conflicting affidavit evidence. This is to be done at trial. At this stage, all that is necessary is for the applicant to show that there is a serious question to be tried. The next step is then to consider whether damages are an adequate remedy if the application is denied. Should the answer be in the affirmative, the application should be denied. Should there be difficulty regarding the availability of damages on either side, the next step is to consider the balance of convenience between the parties. In the event that it is evenly balanced the status quo should be maintained.

6.8 The above principles are a guide as I decide this application.

6.9 The first question to be addressed is whether there exists a serious question to be tried at the hearing of the matter and if on the facts before me, there is a probability that the Plaintiff is entitled to relief. From the evidence led before me and the arguments submitted, the basis for the Plaintiff's claim for an interim injunction is that he is legally and contractually entitled to occupy the farmhouse on Farm No. Sub 7/B/F/288A and that this will enable him to tend to his crop in the fields. In this regard, that he entered into a lease agreement with the Defendant on 10th March 2023 to occupy and conduct agricultural activities on the Farm. That he made a substantial investment using funds obtained on credit to clear the land and purchase farming inputs based on the Defendant's assurance that he had no plans to use the farm and that he would engage an expert to draft a comprehensive lease agreement. However, the Defendant recanted on his contractual obligations and on 28th July 2023 informed the Plaintiff to vacate the farmhouse contrary to the statutory notice period prescribed by the Landlord and Tenant (Business Premises) Act. That the Defendant gave the Plaintiff three options that were all contrary to the terms of their agreement and would jeopardise his investment. Furthermore,

that the Defendant has acted unreasonably towards the Plaintiff. Instances of the unreasonable behavior cited by the Plaintiff include forceful removal of his household goods from the farmhouse, assault, closing of the water supply, and trespass on his crops. That if not restrained the Defendant will continue to trespass, harass, intimidate and temper with the Plaintiff's crops.

6.10 On the other hand, the Defendant is opposed to the grant of an interim injunction in favour of the Plaintiff. His contention being, firstly, that only the farmhouse was advertised for rent and that the Plaintiff was only allowed to use the farmland because the Defendant had no immediate use for it. Secondly, that he has not acted unreasonably towards the Plaintiff nor did he assault him. Thirdly, that he requires the farmhouse for his own use as the house he was living in was sold. Lastly, that the Plaintiff's application should not be granted because moving from one farmhouse to another will not subject him to suffering irreparable damages as he would still be close to his crops.

6.11 On my analysis of the facts and arguments presented, I find that there is a serious question to be tried in the present case and that there is a probability that the Plaintiff is entitled to the relief he seeks. The serious question being that this Court has to determine at trial whether the notice to vacate issued by the Defendant to the Plaintiff was in breach of their lease agreement and/or statutory requirements. Furthermore, the Plaintiff has demonstrated that there is a probability that he is entitled to the relief he seeks because the Farm Lease Agreement exhibited marked as "AC1" in the Plaintiff's Affidavit in Support of the application shows that the Defendant leased Farm No. Sub 7/8/288 A Makeni Konga to the Plaintiff for agricultural and other farming activities.

- 6.12 In arriving at the above finding, I did take into consideration the Plaintiff's evidence that the lease agreement exhibited marked "AC1" was vague and did not contain all the specifics the parties had discussed and agreed on and that the Defendant undertook to engage an expert to prepare a comprehensive document. Furthermore, that it is on this basis that he signed the lease. I also considered the conflicting evidence led by the Defendant that it is actually the Plaintiff who dictated the terms of the lease agreement and that what was advertised to be leased and was subsequently leased was the farmhouse only.
- 6.13 My response is that the foregoing conflicting evidence can only be addressed and determined at trial and not at this stage. I am fortified by the guidance provided in the **American Cyanamid case** that it is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend or to decide difficult questions of law which call for detailed arguments and mature considerations. These being matters to be dealt with at the trial. I am also fortified by the decision in the **Harton Ndove case** that in interlocutory injunction applications, the court is not determining the rights of the parties. Furthermore, the **Turnkey Properties case** wherein it was guided that it is improper for a court hearing an interlocutory application to make comments which may have the effect of pre-empting the decision of the issues which are to be decided on the merits at the trial
- 6.14 I now proceed to the next step which is to consider whether damages are an adequate remedy should the application be denied. Land matters deal with a right to property which cannot be quantified in damages. It is trite law that the loss of an interest in a particular piece of land or a house no matter how ordinary cannot be adequately compensated by

damages: See **Tito v Waddell** and **Gideon Mundanda v Mulyani and Others**. As damages would not suffice to compensate either party for the loss of the land in issue, this case therefore hinges on where the balance of convenience lies. Thus, the question that begs to be answered is where does the balance of convenience lie? Is it in favour of the Plaintiff or the Defendant?

- 6.15 The Plaintiff argued that the parties agreed to a twelve-month (12) lease period for obvious reasons that the growing and harvesting of crops cannot be done in a period of less than 6 months. In addition, other crops in fact remain profitable, with proper care, for more than 12 months. In this regard, he concluded on this point by stating that the agreed period of 12 months would enable him to harvest and realize profits to pay the creditors he owed for farm implements. For the foregoing, I am of the considered view that, the balance of convenience lies in favour of granting the Plaintiff an interim protective measure in the form of an interim injunction.
- 6.16 Consequently, having found that the balance of convenience weighs in the Plaintiff's favour, I grant the Plaintiff's application for an interim injunction in respect of the property in issue. That is, the Defendant is restrained either by himself, his agents, servants, and whoever from evicting the Plaintiff from the farmhouse, trespassing, harassing, intimidating and/or tempering with the crops planted on Farm No. Sub7/B/288A, Makeni Konga pending the determination of these proceedings or until further order by the Court.
- 6.17 However, I have noted that the lease agreement between the parties, exhibited and marked as "AC1", was entered into on 10th March 2023. The Defendant gave the Plaintiff notice to vacate on 28th July 2023, and as of that date, the Plaintiff had already planted his crop. Consequently,

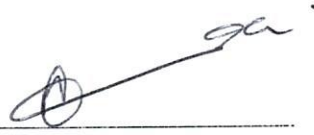
the twelve (12) months that the Plaintiff required a protective measure to harvest his crop, based on that lease agreement, have since elapsed. Therefore, unless the said lease agreement between the parties herein was renewed, this ruling may have been overtaken by events.

6.18 Costs to follow the cause.

6.19 Leave to appeal is granted.

6.20 The matter will come up for a scheduling conference on **7th November, 2024 at 09:30 hours.**

Delivered at Lusaka this 29th day of August, 2024



**C. Chinyanwa Zulu
JUDGE**