

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



2023/HP/1879

BETWEEN:

**MONEYGROW SAVINGS & CREDIT CO-OPERATIVE  
SOCIETY LIMITED**

**PLAINTIFF**

AND

**MAUDEN SHULA  
PAUL MUBANGA  
DR FABIAN MALOLO  
KAY MWINJI LUNGU  
IREEN MUBITA  
REUBEN PHIRI  
BRIGHT SIATONTOLA  
CHARLENE MWENDA  
MUSA MWANZA  
KONI MWANZA**

**1<sup>st</sup> DEFENDANT  
2<sup>nd</sup> DEFENDANT  
3<sup>rd</sup> DEFENDANT  
4<sup>th</sup> DEFENDANT  
5<sup>th</sup> DEFENDANT  
6<sup>th</sup> DEFENDANT  
7<sup>th</sup> DEFENDANT  
8<sup>th</sup> DEFENDANT  
9<sup>th</sup> DEFENDANT  
10<sup>th</sup> DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 15<sup>th</sup>  
DAY OF DECEMBER, 2023**

*For the Plaintiff : Mr L. E Eyaa, and Mr T. Zulu, Messrs Linus E. Eyaa & Partners*

*For the Defendants : Mr P.C Muya, Mr B. Chiumya and Mr I. Ishimaya, Messrs Muya & Company*

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## **R U L I N G**

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CASES REFERRED TO:

1. *Preston v Luck* 1884 CHD 497
2. *American Cyanamid v Ethicon Limited* 1975 1 WLR 316
3. *Shell and BP Zambia Limited v Conidaris and others* 1975 ZR 174
4. *Harton Ndove v National Educational Company of Lusaka Limited* 1980 ZR 184
5. *Turnkey Properties v Lusaka West Development Company Limited, B.S.K. Chiti (Sued as Receiver), and Zambia State Insurance Corporation Ltd.* 1984 ZR 85
6. *Zimco Properties Limited v Lapco Limited* 1988-1989 ZR 92

7. *Hilary Bernard Mukosa v Michael Ronaldson* 1993 - 1994 ZR 26
8. *Communications Authority v Vodacom Zambia Limited* SCZ No 21 of 2009
9. *Hondling Xing Xing Building Company Limited v Zamcaptive Enterprises Limited* 2010 Vol 1 ZR 30
10. *Royal Oak (PVT) v Lusaka City Council and Attorney General* 2010/HP/776
11. *Stripes Zambia Limited v Cinderella Investments and Sana Industries Limited* Appeal No 200/2012
12. *Afritech Asset Management Co Limited v CPD Properties and another* SCZ No 11 OF 2019

LEGISLATION REFERRED TO:

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

OTHER WORKS REFERRED TO:

1. *Zambian Civil Procedure: Commentary and Cases, Vol 1, by Patrick Matibini, Lexis Nexis 2017*

## 1. INTRODUCTION

1.1 By this application, the Plaintiff, Moneygrow Savings & Credit Co-operative Society Limited, seeks an Order of injunction, against Mauden Shula and the other Defendants, restraining Mauden Shula and the others from holding himself out as Chairperson and others as officers of Moneygrow Savings & Credit Co-operative Society Limited, and to stop interfering with the operations of the said Moneygrow Savings & Credit Co-operative Society Limited either by themselves, their servants or agents until the matter is determined.

1.2 The application, which was filed on 25<sup>th</sup> October, 2023, and is made pursuant **Order 27 of the High Court Rules Chapter 27 of the Laws of Zambia**, is supported by an

affidavit and a List of Authorities and Skeleton Arguments. In opposing the application, an affidavit in opposition and a List of Authorities and Skeleton Arguments were filed on 20<sup>th</sup> November, 2023.

## **2. BACKGROUND**

2.1 Moneygrow Savings & Credit Co-Operative Society Limited instituted this action on 25<sup>th</sup> October, 2023, by Writ of Summons accompanied by a statement of claim and the other documents initially against only Mauden Shula claiming:

- i. *An Order that Mauden Shula is not the duly appointed Chairperson of Moneygrow Savings & Credit Co-Operative Society Limited and that he should desist from holding himself out as such;*
- ii. *An Order that the Annual General Meeting that was held on 13<sup>th</sup> October, 2023, which was called by Mauden Shula and all the deliberations thereto have no legal basis, and as such is illegal;*
- iii. *An Order of injunction restraining Mauden Shula from holding himself out as Chairperson of Moneygrow Savings & Credit Co-operative Society Limited and from continuing to interfere with the operations of the said Moneygrow Savings & Credit Co-operative Society Limited either by himself, servants or agents until final determination of the matter.*

2.2 On that same date, an ex-parte application for an Order of interim injunction was filed, which was granted on 26<sup>th</sup>

October, 2023. A return date for the same was given as 29<sup>th</sup> November, 2023. Then on 1<sup>st</sup> November, 2023, Mauden Shula entered appearance and filed a defence and the other documents, as well as an ex-parte application to discharge the Order of injunction, which I directed would be heard interpartes on 29<sup>th</sup> November, 2023.

- 2.3 On 3<sup>rd</sup> November, 2023, Moneygrow Savings & Credit Co-operative Society Limited applied exparte to join the 2<sup>nd</sup> to 10<sup>th</sup> Defendants, which Order was granted on 7<sup>th</sup> November, 2023.

### **3. AFFIDAVIT IN SUPPORT**

- 3.1 Mwangala Chakalashi, who describes herself as the Acting Chairperson of Moneygrow Savings & Credit Co-operative Society Limited, deposes to the affidavit, stating that Mauden Shula from inception, sometime in 2021, held duo roles as Chief Executive Officer and Chairperson of Moneygrow Savings & Credit Co-operative Society Limited until 29<sup>th</sup> December, 2022, when he stepped down.
- 3.2 The averment is that Mauden Shula stepped down from holding the Two (2) capacities due to mismanagement and misappropriation of the co-operative's funds, and failure to render financial statements to the board. The video in which Mauden Shula addressed members of Moneygrow Savings & Credit Co-operative Society Limited is exhibited as 'MC1'. Mwangala Chakalashi states that during the said meeting, she was appointed to act as Chairperson of Moneygrow Savings & Credit Co-operative Society Limited.

- 3.3 The contention is that despite Mauden Shula having stepped down as Chief Executive Officer and Chairperson of Moneygrow Savings & Credit Co-operative Society Limited, he has continued interfering in the operations of the said Moneygrow Savings & Credit Co-operative Society Limited by masquerading as its' Chairperson.
- 3.4 The averment in that regard, is that on 25<sup>th</sup> September, 2023, Mauden Shula allegedly suspended the substantive Chief Executive Officer, as shown by the letter that is exhibited as 'MC2'. Then on 13<sup>th</sup> October, 2023, in breach of the by-laws, Mauden Shula called for an annual general meeting, at which he allegedly assumed the position of Chairperson of Moneygrow Savings & Credit Co-operative Society Limited. A copy of the agenda for the meeting is exhibited as 'MC3'.
- 3.5 It is further deposed that there was no board resolution that called for the annual general meeting, and the meeting was not called Twenty-One (21) days prior to it being held, as by virtue of exhibit 'MC4', being the video from Crown TV facebook, the notification of the meeting was done on 4<sup>th</sup> October, 2023.
- 3.6 Further, as shown in the letter notifying the Zambia Police Service, and the receipt for the payment, which is exhibited as 'MC5', Mauden Shula booked the venue for the meeting in the name of Moneygrow Savings & Credit Co-operative Society Limited on 13<sup>th</sup> October, 2023, and the meeting took place on 13<sup>th</sup> October, 2023. Mwangala Chakalashi avers

that the delegation at the annual general meeting did not consist of paid up members that formed the two thirds majority of the total of 13, 000 members.

#### **4. SKELETON ARGUMENTS IN SUPPORT**

- 4.1 It is argued that the case of ***American Cyanamid v Ethicon Limited*** <sup>(2)</sup> is instructive on the principles that guide on the granting of Orders of injunction. The argument is that *Lord Diplock* in that case, stated that a plaintiff must establish that they have a good and arguable claim that they seek to protect, and that the Court must be satisfied that there is a serious question to be tried. It is further argued, that it is in the discretion of the Court, to grant an order of injunction on a balance of convenience.
- 4.2 The submission is also that the Courts in the cases of ***Shell and BP Zambia Limited v Conidaris and others*** <sup>(3)</sup> and ***Hondling Xing Xing Building Company Limited v Zamcaptial Enterprises Limited*** <sup>(9)</sup> adopted the above principles.

#### **WHETHER THE PLAINTIFF HAS A GOOD AND ARGUBALE CASE?**

- 4.3 Reliance in support of this principle, is placed on the case of ***Royal Oak (PVT) v Lusaka City Council and Attorney General*** <sup>(10)</sup>, and the argument is that Moneygrow Savings & Credit Co-operative Society Limited has raised good and arguable claims, as it has established that Mauden Shula is interfering in its' operations, by taking up a position that is not his. Further, in abrogation of the Rules of Moneygrow

Savings & Credit Co-operative Society Limited, that are well established, Mauden Shula with impunity has disregarded them.

- 4.4 Further reference is made to the case of ***Preston v Luck*** <sup>(1)</sup> stating that the Court in that matter, held that to entitle an applicant to an Order of injunction, the Court is not called upon to finally decide on the rights of the parties, but it must be satisfied that there is a serious question to be tried at the hearing. It is also stated that the Court in that matter, further held that a Court must be satisfied that on the facts before it, there is a probability that the applicant is entitled to relief.
- 4.5 Other authorities cited in that regard, is the case of ***Harton Ndove v National Educational Company of Lusaka Limited*** <sup>(4)</sup>.

**WHETHER DAMAGES WOULD BE AN ADEQUATE REMEDY?**

- 4.6 Moneygrow Savings & Credit Co-operative Society Limited argues with respect to this principle, that an Order of injunction will be granted where an applicant will suffer irreparable injury, that cannot be atoned for in damages. The case of ***American Cyanamid Co v Ethicon Limited*** <sup>(2)</sup> is called upon as authority, stating that *Lord Diplock* in that matter, stated that if damages in the measure that is recoverable at common law would be an adequate remedy, and the defendant would be in a financial position to be able

to pay them, an Order of injunction should not be granted, however strong the plaintiff's claim may appear at that stage.

- 4.7 The argument is that in this case, Mauden Shula has appointed new board members, suspended the duly appointed Chief Executive Officer, and has hijacked the position of Chairperson, and is carrying out the duties of such office arbitrarily, whose repercussions cannot be atoned for in damages.
- 4.8 The decision in the case of ***Shell & B.P. Zambia Limited v Conidaris and others*** <sup>(3)</sup> is cited, which was:

***"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".***

- 4.9 Further reliance is placed on the case of ***Turnkey Properties v Lusaka West Development Co Limited*** <sup>(5)</sup>, which case also reiterated the need to demonstrate that irreparable injury will be suffered if an Order of injunction is not granted.

#### **WHERE DOES THE BALANCE OF CONVENIENCE LIE?**

- 4.10 As for where the balance of convenience lies in this matter, Moneygrow Savings & Credit Co-operative Society Limited argues that the balance tilts in favour of the Order of

injunction being granted, as Mauden Shula is clearly acting contrary to the interests of Monegrow Savings & Credit Co-operative Society Limited. That granting the Order of injunction will ensure that the illegal actions by Mauden Shula do not continue.

4.11 The words of *Lord Diplock* in the case of ***American Cyanamid Co v Ethicon Limited*** <sup>(2)</sup> are again relied on, where he stated 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 the trial; but the plaintiff’s need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff’s undertaking in damages if the uncertainty were resolved in the defendant’s favour at the trial. The court must weigh one need against another and determine where ‘the balance of convenience’ lies.”***

4.12 It is also argued that the Court in the case of ***Zimco Properties Limited v Lapco Limited*** <sup>(6)</sup> held that:

***“The balance of convenience between the parties as to whether to grant an injunction will 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.”***

## **5. AFFIDAVIT IN OPPOSITION**

- 5.1 Mauden Shula, in deposing to the affidavit, states that Mwangala Chakalashi, the deponent of the affidavit that is filed in support of the application, is the former acting Chairperson of Moneygrow Savings & Credit Co-operative Society Limited. He further avers that she assumed that position when he went on voluntary leave of absence to pave way for an audit of the said Moneygrow Savings & Credit Co-operative Society Limited in pursuance of proper corporate governance.
- 5.2 Exhibited as ‘MS1’ are copies of the minutes of the meeting at which he went on the said voluntary leave to pave way for the forensic audit. Mauden Shula also deposes that he is a founder of Moneygrow Savings & Credit Co-operative Society Limited and the elected chairperson of the said cooperative, after he was duly re-elected to that position on 13<sup>th</sup> October, 2023.
- 5.3 In support of that averment, there is exhibited as ‘MS2’ copies of the annual returns that were filed with the Registrar of Societies. It is also stated that Mauden Shula has since inception in 2021, held duo roles as Chief Executive Officer and Chairperson of Moneygrow Savings &

Credit Co-operative Society Limited. He avers that as evidenced by the letter to the Board, and the video exhibited as 'MS3' and 'MS4', he made an announcement that he was returning to Moneygrow Savings & Credit Co-operative Society Limited.

- 5.4 It is stated that this was done upon the realization that the then acting Chairperson and the remaining board members had abandoned the resolution that an audit be conducted, and there was defiance of the by-laws. Further, without the knowledge of the members of the co-operative, they had petitioned the Registrar of Co-operatives to liquidate the co-operative. Exhibited as 'MS5' is a copy of the petition by members of the co-operative to the Registrar of Societies against the said liquidation.
- 5.5 Mauden Shula denies having stepped down as Chairperson and Chief Executive Officer of Moneygrow Savings & Credit Co-operative Society Limited or interfering in its' operations and masquerading as its' Chairperson, stating that members of the former board of the co-operative, in an attempt to conceal their wrongdoing, locked the offices of the said co-operative, without notifying the members or the other stakeholders.
- 5.6 He adds that they illegally petitioned for the winding up of the co-operative, and they continued to defy the by-laws with impunity. Thus, in Order to avert the collapse of the co-operative, Mauden Shula returned to his elected role as Chairperson. He admits having suspended the former acting

Chief Executive Officer of the co-operative on 25<sup>th</sup> September, 2023, justifying the same, on the basis that he has such powers by virtue of his position as Chairperson and having resumed his duties as the substantive Chief Executive Officer.

- 5.7 It is denied that Mauden Shula breached the law by calling for an annual general meeting on 13<sup>th</sup> October, 2023, where he assumed the position of Chairperson of the co-operative, which meeting was called less than Twenty-One (21) days after notice was given for the said meeting. His assertion is that an extraordinary general meeting, and not an annual general meeting was called to address certain urgent and important matters that affected the 13, 000 members of Moneygrow Savings & Credit Co-operative Society Limited, including dissolution of the board, whose term had elapsed by effluxion of time, as well as to elect new members of the board, and update the members on the status of refunds, and the way forward.
- 5.8 The notice of the meeting and the minutes of the said meeting are exhibited as 'MS6' and 'MS7'. It is averred that the extraordinary general meeting was held on 13<sup>th</sup> October, 2023, under the guidance and supervision of the office of the Registrar of Societies, as evidenced by exhibits 'MS8' and 'MS9', being correspondence from the Ministry of Small and Medium Enterprises, and an excerpt of the attendance list.
- 5.9 Further in averment, Mauden Shula denies that he illegally booked the venue for the extraordinary general meeting, and

that the quorum for the meeting did not comprise two thirds of the total number of 13000 members. His position is that all the requirements for the holding of an extraordinary general meeting were satisfied, and there was representation from the various parts of the country.

- 5.10 It is also Mauden Shula's contention, that resolutions were made in compliance with the law. He states that the individual members of the co-operative made contributions towards the financing of the meeting, as the former board members had hidden from the members, having locked the offices and taken all the resources for the cooperative. The list of attendees` at the extraordinary general meeting is exhibited as 'MS8'.
- 5.11 The assertion is further that the quorum for the extraordinary general meeting comprised paid up members, as shown on the list of attendees`, and the minutes of the meeting, which are exhibited as 'MS8' and 'MS9'.
- 5.12 In denying that he is holding himself out as Chairperson of the co-operative, and that on that basis, the Order of injunction should be granted, Mauden Shula deposes, repeating the averment that the former board of the co-operative, attempted to liquidate the co-operative without the knowledge of the members, which had been abandoned after guidance was given by the Department of Co-operatives.

- 5.13 Exhibits 'MS10' and 'MS11' are stated as being copies of the letter that the members of the co-operative wrote against liquidation, and the letter from the Registrar of Societies.
- 5.14 Mauden Shula accuses the former acting Chairperson of the co-operative, and the other former board members of refusing to be accountable to the members, distancing themselves from Moneygrow Savings & Credit Co-operative Society Limited, stating that there is new management, as shown on excerpts of WhatsApp messages conversations between the former board members and Moneygrow Savings & Credit Co-operative Society Limited members, which were reported to Mauden Shula.
- 5.15 It is also deposed that Moneygrow Savings & Credit Co-operative Society Limited was embroiled in several suspected criminal transactions that left the majority of the membership disadvantaged and various stakeholders and members have taken out Court process against Moneygrow Savings & Credit Co-operative Society Limited, as shown on exhibit 'MS13a' to 'MS13e'.
- 5.16 Further, the erstwhile board members have withheld all the resources and assets that belong to Moneygrow Savings & Credit Co-operative Society Limited to the detriment of the other members. It is deposed that this culminated in the lodging of a complaint against each of the members to the Zambia Police Service headquarters on behalf of the members, which complaint is exhibited as 'MS14'.

5.17 Mauden Shula also in deposing, states that Moneygrow Savings & Credit Co-operative Society Limited in applying for the Order of injunction, omitted to inform this Court that the members of the co-operative elected him as Chairperson and the state of the co-operative.

## **6. SKELETON ARGUMENTS IN OPPOSITION**

6.1 In the arguments, Mauden Shula and the others, refer to the case of ***Shell & BP Zambia Limited v Conidaris and others*** <sup>(3)</sup> as regards the Court in that matter, having held that a Court will generally not grant an Order of injunction, unless the right to relief is clear. Other authorities cited in that regard are ***Communications Authority v Vodacom Zambia Limited*** <sup>(8)</sup> and ***Turnkey Properties v Lusaka West Development Company Limited*** <sup>(5)</sup>.

6.2 This is premised on the contention that only a fraction of Moneygrow Savings & Credit Co-operative Society Limited are challenging the validity of the meeting that re-elected Mauden Shula as its' Chairperson.

6.3 The basis of the contention is that:

1. Moneygrow Savings & Credit Co-operative Society Limited failed/neglected and omitted to make full and frank disclosure of the several issues that preceded the members resolving to call for an extraordinary general meeting, which included the erstwhile board of directors attempting to liquidate the co-operative without the knowledge of the members and

stakeholders, and the closing of the co-operative's offices without notice to the creditors.

2. Moneygrow Savings & Credit Co-operative Society Limited in pure defiance of the law neglected to make an undertaking as to damages in making the application for an Order of injunction.
3. That the right to relief for Moneygrow Savings & Credit Co-operative Society Limited is not clear, and it will not suffer irreparable injury.

#### **WHETHER THE RIGHT TO RELIEF IS CLEAR**

- 6.4 The decision in the case of ***Turnkey Properties v Lusaka West Development Company Limited*** <sup>(5)</sup> is reiterated, with the cases of ***Preston v Luck*** <sup>(1)</sup> and ***Hilary Bernard Mukosa v Michael Ronaldson*** <sup>(7)</sup> also being relied on. The arguments highlighted in paragraph 6.3 are stressed as being the reason why the right to relief is not clear.
- 6.5 It is added that Moneygrow Savings & Credit Co-operative Society Limited, is deliberately trying to mislead the Court by referring to an annual general meeting having been held, but it did not make full disclosure on the prevailing facts that necessitated the calling of an extraordinary general meeting. Therefore, it should not be allowed to take advantage of the machinery of justice by obtaining the Order of injunction.
- 6.6 In that regard, the holding in the case of ***Turnkey Properties v Lusaka West Development Company Limited, B.S.K. Chiti (Sued as Receiver), and Zambia***

**State Insurance Corporation Ltd** <sup>(5)</sup> is cited as authority, which was:

***“An interlocutory injunction is appropriate for the preservation or restoration of a particular situation pending trial; but it cannot, in our considered view, be regarded as a device by which the applicant can attain or create new conditions, favourable only to himself, which tip the balance of the contending interests in such a way that he is able, or more likely, to influence the final outcome by bringing about an alteration to the prevailing situation which may weaken the opponents' case and strengthen his own.”***

- 6.7 It is stated that Moneygrow Savings & Credit Co-operative Society Limited, did not make an undertaking as to damages and full and frank disclosure of the events leading to the election of Mauden Shula as Chairperson of the Co-operative. The addition is that it is trite, that he who comes to equity, comes with clean hands.

#### **IRREPARABLE INJURY**

- 6.8 On this principle, Mauden Shula and the others argue that damages would be an adequate remedy, and therefore, an Order of injunction should not be granted. Again, reliance is placed on the case of ***Turnkey Properties v Lusaka West Development Company Limited, B.S.K. Chiti (Sued as Receiver), and Zambia State Insurance Corporation Ltd.*** <sup>(5)</sup> with the argument being that Moneygrow Savings & Credit

Co-operative Society Limited has not demonstrated that it will suffer irreparable injury if the Order of injunction is not granted.

### **BALANCE OF CONVENIENCE**

- 6.9 As for the balance of convenience, the argument, relying on the holding in the case of *American Cyanamid Co v Ethicon Limited* <sup>(2)</sup> is that, the balance of convenience lies with Mauden Shula and the others, as Moneygrow Savings & Credit Co-operative Society Limited is likely to suffer loss and irreparable injury, should it not adhere to the payment plans that was agreed to. Further, there will added risk to the co-operative which will be detrimental to its' members.
- 6.10 The case of *Hondling Xing Xing Building Company Limited v Zamcapital Enterprise Limited* <sup>(9)</sup> which has been relied on by Moneygrow Savings & Credit Co-operative Society Limited, is also relied on.

### **EQUITABLE RELIEF**

- 6.11 Mauden Shula and the others further argue that an injunction is an equitable relief, and therefore, any one who seeks it, should observe the principles of equity, and must exercise good faith by disclosing all the material facts. The provisions of *Section 13 of the High Court Act, Chapter 27 of the Laws of Zambia*, are cited, in that regard.

### **MISAPPREHENSION OF FACTS**

- 6.12 It is also submitted that the affidavit that is filed in support of the application, alleges that an annual general meeting was called on 13<sup>th</sup> October, 2023, in breach of the by-laws.

However, Mauden Shula and the others, contend that this averment was meant to mislead the Court, as what was called was extraordinary general meeting to address the various urgent issues relating to the former members of the board, who had sought to liquidate the co-operative without the knowledge of the members, and who since the guidance that was given by Department of Cooperatives, had abandoned the co-operatives registered offices, and had refused to be accountable to the members, or be at their service.

## **7. SUBMISSIONS AT THE HEARING**

### **SUBMISSIONS BY COUNSEL FOR MONEYGROW SAVINGS & CREDIT CO-OPERATIVE SOCIETY LIMITED**

- 7.1 Counsel for Moneygrow Savings & Credit Co-operative Society Limited, Mr Linus Eyaa, in making the application, stated that they relied on the affidavit that was filed in support of the application, as well as the List of Authorities and the Skeleton Arguments in support. Counsel in augmenting, submitted that Mauden Shula and the others had assumed office, and had started running Moneygrow Savings & Credit Co-operative Society Limited without following the by-laws that had been exhibited.
- 7.2 It was stated that in that process, illegalities had been committed, and threats had been made to the office bearers of Moneygrow Savings & Credit Co-operative Society Limited, with announcements being made on Crown Radio to make citizens' arrests. Counsel stated that the threats to life

needed to be stopped by way of injunction pending determination of the matter by the Court.

- 7.3 It was also submitted that if the Order of injunction were to be discharged, the Court would have determined the matter, as the main claim is that Mauden Shula is not a duly appointed Chairperson of Moneygrow Savings & Credit Co-operative Society Limited, and that he should desist from holding himself out as such.
- 7.4 Secondly, the annual general meeting that was held on 13<sup>th</sup> October, 2023, which was called by Mauden Shula, was held without legal basis, and was therefore illegal. Thus, Counsel's submission was that if the Order of injunction were to be discharged, then the Court would pave way for the illegalities, as Mauden Shula and the others would continue to occupy the positions.
- 7.5 It was also Counsel's submission that the Order of injunction was necessary to maintain the status quo pending determination of the matter, and that it would also ensure that the threats to life would be stopped. It was added that life is irreparable, and that maintaining the Order of injunction would not prejudice Mauden Shula and the others, but would instead pave way for smooth handover.
- 7.6 Mr Zulu added that the case of ***American Cyanamid Co v Ethicon Limited*** <sup>(2)</sup> which they had cited in the Skeleton Arguments, had laid down the principles that govern the granting of Orders of injunction. That going by the same, they had established that there is a serious question to be

tried, relating to the manner in which the Mauden Shula and the others' faction were appointed to hold office on 13<sup>th</sup> October, 2023.

7.7 Further, like Mr Eyaa, Mr Zulu also reiterated the threats to life that had been made, and added that irreparable injury would be occasioned to the office bearers who were removed by virtue of the meeting that was held on 13<sup>th</sup> October, 2023. Counsel referred to exhibit 'MC2' to the affidavit filed in support of the application, stating that in that letter, which was dated 25<sup>th</sup> September, 2023, Mauden Shula had made numerous allegations against some of the members of the co-operative.

7.8 Thus, the submission was that if the Order of injunction was not confirmed, there would be irreparable injury that could not be atoned for in damages. Counsel invited this Court to consider the decision in the case of *Afritech Asset Management Co Limited v CPD Properties and another* (12), submitting that the Supreme Court in that case, held that the Court should consider where the balance of convenience lies when discharging an Order of injunction.

7.9 It was repeated that the threats to life and the continued attacks on the reputation of the members of Moneygrow Savings & Credit Co-operative Society Limited would continue if the Order of injunction was discharged.

**RESPONSE BY COUNSEL FOR MAUDEN SHULA AND THE OTHERS**

- 7.10 In response, Mr Muya stated that Counsel for Moneygrow Savings & Credit Co-operative Society Limited had stated that the claims in the main, seek to restrain Mauden Shula and the others from holding out and performing the functions of the duly elected members of the said co-operative society. It was submitted that the injunction application sought to equally obtain that relief.
- 7.11 Counsel further submitted that they had shown in the affidavit in opposition, as well as in the skeleton arguments in opposition dated 20<sup>th</sup> November, 2023, that upholding the injunction would amount to determining the matter on its' merits, without proof of the allegations having been made. It was stated that the nature of the meeting, whether it was an extraordinary or general meeting, needed to be established.
- 7.12 It was also submitted that they had demonstrated the ingredients that need to be satisfied before an Order of injunction can be granted, which they argued, had not been met. The submission was that a meeting was held, which elected Mauden Shula and the others, as office bearers by the majority of members. Further, that the majority of the members, and not Mauden Shula and the others, called the meeting.
- 7.13 In respective of the irreparable injury that had been argued as would be occasioned, if the Order of injunction was discharged, Counsel stated that this would be cured by the appointment of office bearers who had been appointed by members of the co-operative, which office bearers included

the deponent of the affidavit. He added that the affidavit in opposition showed the presence of members of the co-operative from all parts of the country.

7.14 Thus, no damage would be occasioned, but rather rectification of the previous office bearers mistakes would be done, and protection of the reputation of Moneygrow Savings & Credit Co-operative Society Limited would be preserved, as the co-operative hinges on finances. The submission was also that Moneygrow Savings & Credit Co-operative Society Limited had not demonstrated how irreparable injury would be occasioned to it.

7.15 In respect to the right to relief being clear, it was Counsel's submission that they had cited authorities in their arguments, that showed that Mauden Shula and the others, only had the co-operatives interests at heart, and they had shown that those behind the co-operative, had attempted to run away from the responsibilities as office bearers, by attempting to liquidate the co-operative without the consent of the members on whose behalf it had transacted.

7.16 However, the liquidation was rejected by the Registrar of Societies, and the deponent of the affidavit had informed the members of the co-operative that he no longer worked for Moneygrow Savings & Credit Co-operative Society Limited which had been sued by its' members, and default Judgments had been entered.

7.17 With regard to the balance of convenience, Counsel stated that as demonstrated by the affidavit in opposition, if the

Order of injunction were to be upheld, the complaints, the law suits and the losses that had been suffered by the members of the co-operative would continue. It was also submitted that Mauden Shula and the others are equally members of the co-operative, and suppliers had not been paid.

- 7.18 It was added that the suspicion was that the office bearers had withdrawn money which had been reported to the police.
- 7.19 On the status quo, Counsel's submission was that Mauden Shula and the others are the duly appointed office bearers of Moneygrow Savings & Credit Co-operative Society Limited. I was asked to maintain this position pending determination of the matter. It was denied that Mauden Shula and the others had abrogated the by-laws for Moneygrow Savings & Credit Co-operative Society Limited, with Counsel submitting that they legally followed the said by-laws by calling for an extraordinary meeting, at which even members of the office of the Registrar of Societies were present.
- 7.20 The submission as regards extending the Order of injunction to the defendants, other than Mauden Shula, was that those other defendants were not served the said Order of injunction. Thus, the Order could not be extended to them. Counsel also stated that the threats that had been alleged, had come from the general members who were aggrieved. Thus, maintaining the Order of injunction would accelerate the threats, which Mauden Shula and the others had not made.

- 7.21 Mr Chiumya also in submission added, reiterating the principles that were laid down in the case of ***American Cyanamid Co v Ethicon Limited*** <sup>(2)</sup>. He stated that however, Moneygrow Savings & Credit Co-operative Society Limited was trying to partially apply those principles. In that respect, the submission was that it had not made an undertaking as to damages.
- 7.22 Reference was made to ***Order 29/L23 of the Rules of the Supreme Court of England, 1999 Edition***, as being very clear on the need to make an undertaking as to damages. It was also stated that Moneygrow Savings & Credit Co-operative Society Limited also had a duty to inform this Court, the circumstances that necessitated the members to call for an extraordinary general meeting.
- 7.23 It was reiterated that Mauden Shula did not call for the meeting, but rather, the affected members of the cooperative did so, following the closure and relocation of the offices of the cooperative from the registered office without notice to the affected members, the Registrar of Societies and the other stakeholders, the filing of the petition to liquidate the cooperative without notice to the members and other stakeholders.
- 7.24 Thus, the members petitioned the Registrar of Societies who guided that the members needed to hold an extraordinary meeting. Therefore, a notice was issued for the meeting at which the elections were conducted, and Mauden Shula was

elected as Chairperson of the co-operative. It was also submitted that annual returns had since been filed.

- 7.25 The submission premised on the above, was that the right to relief was not clear, and that the Order of injunction should be discharged. It was further stated that damages be paid by Moneygrow Savings & Credit Co-operative Society Limited as it had not made an undertaking as to damages.

**REPLY BY COUNSEL FOR MONEYGROW SAVINGS & CREDIT CO-OPERATIVE SOCIETY LIMITED**

- 7.26 The reply was that in the affidavit in opposition, Mauden Shula had deposed that he is a former Chief Executive Officer of the co-operative, and the reasons why he had stepped down from office had been stated. It was also stated that this Court could issue directives as to the undertaking as to damages. Reference was made to exhibit 'MC5' on the members who were present in the meeting.
- 7.27 Counsel also noted that exhibit 'MS9' to the affidavit in opposition was written to the Permanent Secretary and not Mauden Shula and the others.

**8. DECISION OF THIS COURT**

- 8.1 I have considered the application. It has been pursuant to **Order 27 of the High Court Rules** which provides that:

***"1. In any suit in which it shall be shown, to the satisfaction of the Court or a Judge, that any property which is in dispute in the suit is in danger of being wasted, damaged or alienated by any party to the suit, it shall be lawful for the***

*Court or a Judge to issue an injunction to such party, commanding him to refrain from doing the particular act complained of, or to give such order, for the purpose of staying and preventing him from wasting, damaging or alienating the property, as to the Court or a Judge may seem meet, and, in all cases in which it may appear to the Court or a Judge to be necessary for the preservation or the better management or custody of any property which is in dispute in a suit, it shall be lawful for the Court or a Judge to appoint a receiver or manager of such property, and, if need be, to remove the person in whose possession or custody the property may be from the possession or custody thereof, and to commit the same to the custody of such receiver or manager, and to grant to such receiver or manager all such powers for the management or the preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as to the Court or a Judge may seem proper.”*

8.2 In terms of the principles that govern the granting of Orders of injunction, these were laid down in the case of ***American Cyanamid Co v Ethicon Limited*** <sup>(2)</sup>, which can be summarised as follows:

- i. *Is there a serious question to be tried?*

- ii. *If the answer to that question is yes, then would damages be an adequate remedy?*
- iii. *If the answer is yes, then the Order of injunction should not be granted.*
- iv. *If however, the answer is no, the Court should look at where the balance of convenience lies.*

8.3 In this matter, Moneygrow Savings & Credit Co-operative Society Limited is a co-operative, that is registered under the **Co-operatives Societies Act No 20 of 1998**. It draws its' mandate from there. Without delving into the merits of the matter, as deposed in the affidavit in opposition, the 1<sup>st</sup> Defendant, Mauden Shula is one of its' founding members and a Chairperson and Chief Executive Officer of the said co-operative.

8.4 However, he stepped down from those positions at a meeting of the board of the co-operative that was held on 29<sup>th</sup> December, 2022. At the said meeting at which he stepped down, a Chairperson and Chief Executive Officer were appointed to take over from him. The video in which he was recorded as having stepped down is exhibited as 'MC1' to the affidavit filed in support of the application.

8.5 Disgruntled with the manner in which the new office bearers are running the affairs of the co-operative, Mauden Shula as evidenced by exhibits marked 'MC2', being a letter dated 25<sup>th</sup> September, 2023 to the affidavit filed in support of the application, suspended the Chief Executive Officer of Moneygrow Savings & Credit Co-operative Society Limited

and a notice for an annual general meeting which was scheduled for 13<sup>th</sup> October, 2023, was issued, which is exhibited as 'MC3'.

- 8.6 The evidence on record, shows that the said annual general meeting was held. In the videos that are exhibited to the affidavit filed in support of the application as 'MC4', it shows that Mauden Shula held a media briefing in which he advised members of Moneygrow Savings & Credit Co-operative Society Limited that an annual general meeting had been convened for 13<sup>th</sup> October, 2023.
- 8.7 Exhibit 'MC5' to the said affidavit is a letter, dated 10<sup>th</sup> October, 2023, that Mauden Shula wrote to the Officer in Charge for Kabwata Police Station in the capacity as Chairperson of Moneygrow Savings & Credit Co-operative Society Limited, notifying the said Officer in Charge, that an extraordinary general meeting of the members, would held on 13<sup>th</sup> October, 2023 at Hindu Hall in Kamwala area.
- 8.8 Mauden Shula as seen from the affidavit in opposition avers that he was prompted to take up the said actions as the former board of Moneygrow Savings & Credit Co-operative Society Limited attempted to liquidate the co-operative without informing the members, and the other stakeholders, and they had closed the offices for Moneygrow Savings & Credit Co-operative Society Limited and relocated. Further, they have refused to be accountable to the members of the co-operative.

- 8.9 The documents that I have referred to above, are in tandem with Mauden Shula's contention as to why he is in fact running the affairs of Moneygrow Savings & Credit Society Limited, despite having stepped down from his positions in the co-operative on 29<sup>th</sup> December, 2022. He states that he has since reverted to his position as Chief Executive Officer of the co-operative, having been re-elected as Chairperson of the Co-operative.
- 8.10 The evidence on record shows that Mauden Shula stepped down from his positions of leadership in Moneygrow Savings & Credit Co-operative Society Limited during the meeting of the board. Thus, the question that arises, is that being the position, how could he return to the position of Chief Executive Officer of the Co-operative, and how could a meeting to elect him back to the position of Chairperson of the Co-operative be convened, and by who?

**WHETHER THERE IS A SERIOUS TO BE TRIED?**

- 8.11 Therefore, in answering the first question, as to whether there is a serious question to be tried, that is in the affirmative, in view of what I have outlined above.

**WHETHER DAMAGES WOULD AN ADEQUATE REMEDY?**

- 8.12 As for whether, damages would be an adequate remedy, the issues in this matter relate to funds that the members of the co-operative have invested in the co-operative that are alleged to have been misappropriated under the leadership of Mauden Shula and other members of his management team. It will further be seen from the videos exhibited to the

affidavit in support of the application, that Mauden Shula alleges that the board of the co-operative that took over after he stepped down as Chairperson and Chief Executive Officer, also misappropriated the funds of the co-operative.

- 8.13 This being the state of affairs, where the opposing factions are making allegations of misappropriation of the funds of the co-operative, this is a case where damages would not be an adequate remedy, as the harm that may be occasioned to the co-operative may be irreparable.
- 8.14 Mauden Shula and the others have argued that Moneygrow Savings & Credit Co-operative Society Limited did not make full and frank disclosure in applying for the Order of injunction. This is because it did not state the prevailing circumstances of the co-operative, and that they had attempted to liquidate it without informing the members and the other stakeholders. Further, it did not inform the Court that the erstwhile board members had locked up the co-operatives offices and relocated and had refused to be accountable to the members.
- 8.15 It has also been argued that Moneygrow Savings & Credit Co-operative Society Limited did not make an undertaking as to damages when taking out the application for the Order of injunction. Thus, the Order of injunction should be discharged.
- 8.16 It is trite, that when making an application for an Order of injunction that there must be full and frank disclosure.

*Order 29/1A/24 of the Rules of the Supreme Court of England* provides that:

*“On any ex parte application, the applicant must proceed "with the highest good faith". The fact that the Court is asked to grant relief without the person against whom the relief is sought having the opportunity to be heard makes it imperative that the applicant should make full and frank disclosure of all material facts, otherwise the order may be set aside without regard to the merits.*

*The duty of full disclosure has always been important. The emergence and development of Mareva injunctions and Anton Piller orders as forms of interlocutory relief has given the courts occasion to re-affirm it. Most of the modern case law arises out of applications for relief of this kind.....*

*The applicant must make proper inquiries before making the application. The material facts to be disclosed are all matters which are material for the judge to know and which are necessary to enable him to exercise his discretion properly. The plaintiff should give particulars of his claims against the defendant, stating the grounds of his claims and the amount thereof and, in addition, should fairly state the points made against him by*

*the defendant. Where the plaintiff's affidavit is contentious and litigious, putting the defendant in the worst possible light and failing to put his defence clearly to the Court, the injunction should not be granted or continued.*

*Materiality is to be decided by the Court and not by the assessment of applicants or their advisers. Material facts include not only facts known to the applicant but also any additional facts which should be known if proper inquiries were made. The extent of such inquiries depends on all the circumstances of the case, including (1) the nature of the case which the applicant is making when he makes the application, (2) the order for which the application is made and the probable effect of the order on the defendant, (3) the degree of legitimate urgency and the time available for making inquiries.*

*An applicant has a duty to inform the Court as soon as he becomes aware that the Court has been misinformed or given incomplete information at the time of the ex parte application; there is also a duty to disclose any material change of circumstance while the proceedings remain on an ex parte basis.....”*

8.17 In the case of ***Stripes Zambia Limited v Cinderella Investments and Sana Industries Limited*** <sup>(11)</sup> the Supreme Court noted as follows:

***“There is an obligation on the part of the Applicant for an injunction and particularly in the case of an ex parte application to inform the Court of any point which may help the other side or that it believes the other side would have made if it had the opportunity to be heard. This duty extends to facts that the applicant or the other side would have known about, had they made proper enquiries (Order 29/1/33 RSC). If the Court subsequently considers that the party applying for the injunction has not made proper enquiries or full disclosure, it will set aside the injunction.”***

8.18 Further, with regard to making an undertaking as to damages, ***Order 29/23L of the Rules of the Supreme Court of England*** states that:

***“In American Cyanamid v. Ethicon Ltd [1975] A.C. 396; [1975] 2 W.L.R. 316, HL, Lord Diplock explained (at 406 and 321) that, where a plaintiff is granted relief by way of interlocutory injunction, the practice is (and has been since at least the middle of the nineteenth century) to make this subject to a condition in the form of the plaintiff's undertaking to pay damages to the defendant for any loss sustained by reason of the***

*injunction if it subsequently transpires that it ought not to have been granted, for example, if the proceedings are discontinued, or if the injunction is discharged before trial, or "if it should be held at the trial that the plaintiff had not been entitled to restrain the defendant from doing what he was threatening to do". Originally the undertaking was inserted only in ex parte orders for injunctions. The object was to protect the Court as well as the defendant from improper applications for injunctions. By degrees the practice was extended to all cases of interlocutory injunction. In effect, "an undertaking is the price of an injunction".*

*In a case where it is determined that the injunction should not have been granted the undertaking is likely to be enforced, though the court retains a discretion not to do so .....*

*The use of the word "damages" is perhaps inappropriate because it might suggest that the grant of the injunction involved a breach of some legal or equitable rights of the defendant. The undertaking is given to the Court and is not a matter of contract between the parties and it is intended to provide a method of compensating the party enjoined if it subsequently appears that the injunction was wrongly granted.*

*The usual form of undertaking is:*

***"to abide by any order which this court may make as to damages in case this court shall be of the opinion that the respondent shall have suffered any by reason of this order which the applicant ought to pay".***

***As an extra condition, the plaintiff may be required to fortify the undertaking by giving security.***

***An undertaking ought to be a condition of every interlocutory injunction, though not where the order is in the nature of a final order. An interlocutory injunction may be granted on terms that the writ should be amended by adding a plaintiff in order that an undertaking as to damages might be given on his behalf.***

***The Court cannot compel an applicant to give an undertaking but it can refuse to grant an injunction unless he does. Where the Court is minded to impose such a condition it is a matter for the applicant to decide whether he is prepared to give it and, if it is insisted upon, to provide security. If he is not the injunction does not go...."***

8.19 Therefore, making an undertaking as to damages is not mandatory. The discretion lies in the Court to Order the making of such an undertaking. The record shows that the deponent of the affidavit filed in support of the application, who is a member of the board that was in place before

meeting of 13<sup>th</sup> October, 2023, did not disclose that they had attempted to liquidate Moneygrow Savings & Credit Co-operative Society Limited. Further, she did not respond to the assertion that they as members of the board that was in place prior to the meeting of 13<sup>th</sup> October, 2023 have closed the offices for Moneygrow Savings & Credit Co-operative Society Limited and relocated.

- 8.20 That in and of itself, was failure to disclose a material fact, as the state of affairs of Moneygrow Savings & Credit Co-operative Society Limited and its' leadership is at the core of the dispute in this matter. However, I have also noted that there is the question of how Mauden Shula who had stepped down as Chairperson and Chief Executive Officer of the co-operative, could lawfully re-assume the office of Chief Executive Officer and thereafter be re-elected as Chairperson of the Co-operative.

**WHERE DOES THE BALANCE OF CONVENIENCE LIE?**

- 8.21 That brings me to the balance of convenience. As stated by Lord Diplock in the case of ***American Cyanamid Co v Ethicon Limited***, that in considering where the balance of convenience lies, the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights, for which he could not be adequately compensated under the plaintiff's undertaking in damages, if the uncertainty were

resolved in the defendant's favour at the trial. The court must weigh one need against another.

8.22 The learned author Patrick Matibini in the book, ***Zambian Civil Procedure: Commentary and Cases, Vol 1 Lexis Nexis 2017*** at page 777 citing ***Sime, A Practical Approach to Civil Procedure 484*** gives the instances in which an Order of interim injunction may be discharged.

These are:

- “(a) material non-disclosure if the interim injunction was granted without notice;***
- (b) The particulars of the claim being inconsistent with the written evidence on an application without notice;***
- (c) The facts not satisfying relief without notice;***
- (d) The claimant's failure to comply with the undertaking incorporated in the order;***
- (e) The order having an oppressive effect;***
- (f) Unreasonable interference with the rights of innocent third parties. Affected third parties are entitled to apply for variation of the Order;***
- (g) Material change in the circumstances; and***
- (h) A failure to prosecute a substantive claim with due speed”.***

8.23 Thus, in weighing the needs of the Two (2) contending parties, that is who should be in the board of management of Moneygrow Savings & Credit Co-operative Society Limited, the fact that allegations of misappropriation of the members

funds have been alleged against each party, the balance tilts in favour of the Order of injunction being granted against both parties, rather than against one party.

- 8.24 In pursuance of the Court's inherent powers, I will maintain the Order of injunction, but vary it, to restrain even the board of the co-operative that was removed as a result of the meeting that was held on 13<sup>th</sup> October, 2023.
- 8.25 **Article 39** of the by-laws of Moneygrow Savings & Credit Co-operative Society Limited empowers the Registrar of Co-operative Societies, to exercise powers in relation to the co-operative following due legal process. Those powers include suspension and removal of any officers from their office, employees and members of the Board, if it is in the interest of the co-operative.
- 8.26 Pursuant to that provision, there being legal proceedings relating to the leadership and management of Moneygrow Savings & Credit Co-operative Society Limited, I direct that having issued an Order of injunction restraining both parties in this matter from assuming the leadership and management of the co-operative, that the said powers shall be exercised by the Registrar of the Co-operative societies until further Order of the Court.
- 8.27 All the documents and assets relating to Moneygrow Savings & Credit Co-operative Limited shall forthwith be surrendered to the Registrar of Co-operatives, by an persons who are in possession of the documents. Any disobedience of the Order shall risk such persons being cited for contempt of Court.

## 9. CONCLUSION

- 9.1 Having so decided, the risk of continued threats of violence and intimidation of any office bearers although not a reason why the Order of injunction was sought, has been allayed pending determination of the matter on its' merits. Moneygrow Savings & Credit Co-operative Society Limited shall amend the Writ of Summons and Statement of Claim and the other documents to include the names of the defendants that have been added in this matter as well as the reliefs that are sought against them by 22<sup>nd</sup> January, 2024.
- 9.2 Thereafter, the amended defence and the other documents shall be filed by 6<sup>th</sup> February, 2024 and the matter shall come up for Orders for directions on 12<sup>th</sup> February, 2024 at 08:45 hours.
- 9.3 Costs shall be in the cause, and leave to appeal is granted.

**DATED AT LUSAKA THE 15<sup>th</sup> DAY OF DECEMBER, 2023**

*S. Kaunda*  
**S. KAUNDA NEWA**  
**HIGH COURT JUDGE**

