

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

2024/HP/1404

BETWEEN:

GEORGE KUSALWA

AND

ISAAC MPOFU



PLAINTIFF

DEFENDANT

Before:

The Hon. Mr. Justice Charles Zulu.

For the Plaintiff:

Mr. A. Sike, Messrs Arthur Sike Legal Practitioners.

The Defendant:

No Appearance.

R U L I N G

Cases referred to:

- 1. ZIMCO Properties Limited v LAPCO Limited (1988-1989) Z.R. 92.***
- 2. American Cyanamid Co. v Ethicon Ltd (1975) A.C 396.***
- 3. Turnkey Properties v Lusaka West Development and Others (1984) Z.R. 85 (SC).***

Legislation referred to:

- 1. The High Court Rules, Chapter 27 of the Laws of Zambia.***

1.0 INTRODUCTION

1.1 This ruling is in respect of an application dated November 5, 2024 at the instance of the Plaintiff, George Kusalwa for an interlocutory order of injunction against the Defendant, Isaac

Mpofu. The application was made pursuant to Order XXVII rule 1 of the **High Court Rules Chapter 27 of the Laws of Zambia**. And by this application, the Plaintiff seeks to restrain the Defendant from interfering with the operation and quiet possession of the Plaintiff's alleged land under customary tenure in Mpulumushi Village, Chief Malembeka.

2.0 BACKGROUND

2.1 The Plaintiff took out a writ of summons and statement of claim dated October 1, 2024 against the Defendant essentially challenging the consent obtained by the Defendant for conversion of the subject property from customary tenure to leasehold tenure; alleging the same to have been procured by fraud and was void. The Plaintiff thus sought cancellation of the said consent.

3.0 THE HEARING

3.1 The application was slated for *inter partes* hearing on March 19, 2025. However, on the return date, only the Plaintiff's Counsel was present. I was apprised by the Plaintiff's Counsel that the Defendant refused to receive the notice of hearing when he was served. And being satisfied that the Defendant was served with the notice of hearing, leave to proceed with the application was granted.

4.0 AFFIDAVIT EVIDENCE & ARGUMENTS

4.1 An affidavit in support of the application was deposed to by the Plaintiff, George Kusalwa. He deposed that in 2023 he discovered that the Defendant had purchased part of his customary land from unknown persons, without his knowledge.

4.2 He stated that upon hearing of the purported sale, he approached the Defendant, and the Defendant obliged by halting his developmental works on the land. He added that the matter was reported to the Village Committee who counselled the Defendant and asked the Defendant to vacate the land, but the Defendant secretly and fraudulently obtained signatures from some local village residents to make the purchase look genuine, and obtained consent to convert the land tenure from customary tenure to leasehold tenure.

4.3 The Plaintiff's Counsel, Mr. Sike argued that the balance of convenience in this case tilted in favor of granting the Plaintiff an injunction, so that the parties' *status quo* is maintained while the matter pends determination on the aspect of ownership. The case of ***ZIMCO Properties Limited v LAPCO Limited***¹ was cited wherein it was held:

4.3.1 ***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.***

4.4 I was urged to grant the application.

4.5 The application was unopposed.

5.0 DETERMINATION

5.1 I have carefully considered the facts in support of the application and the arguments thereof. The object upon which an interlocutory injunction is granted is *inter alia* to preserve

the *status quo*. In the memorable case of **American Cyanamid Co. v Ethicon Ltd²** it was held:

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

5.2 Additionally, in the case of **Turnkey Properties v. Lusaka West Development and Others³** the Supreme Court held:

5.2.1 ***In order to succeed, the appellant should have demonstrated that, not only was their right to the relief sought clear, but above all, that the injunction is necessary to protect them from irreparable injury***

5.3 Having regard to the Plaintiffs' pleadings and affidavit evidence, it is my considered opinion that not only has the Plaintiff demonstrated *prima facie*, a clear right to relief, but there is also a serious question to be tried as to the ownership of the subject property. And the dispute being one that is land based, damages may not be an adequate remedy, if the *status quo* is not preserved by an order of injunction.

6.0 CONCLUSION

6.1 In the view of the foregoing, the application for an interlocutory injunction is hereby granted. And by this order, the Defendant by himself, his servants or agents is hereby restrained from interfering with the operation and quiet possession of the land by the Plaintiff or, taking any action that will interfere with the subject land, until final determination of this matter.

6.2 Costs in the cause for the Plaintiff.

6.3 Leave to appeal is granted.

DATED THE 19TH DAY OF MARCH, 2025



.....
THE HON. MR. JUSTICE CHARLES ZULU