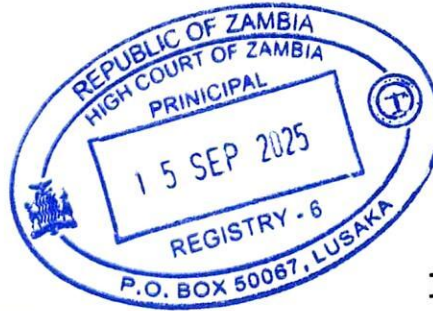


IT

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

2024/HP/1726



BETWEEN:

**WILFRED MWENYA  
GRANNY'S BAKERY LIMITED**

**1<sup>ST</sup> PLAINTIFF  
2<sup>ND</sup> PLAINTIFF**

**AND**

**HUSTY MOFFAT MWACHILELE**

**DEFENDANT**

**BEFORE: HONOURABLE, LADY JUSTICE G. C. CHAWATAMA IN  
CHAMBERS ON THE 17<sup>TH</sup> MARCH, 2025**

For the Plaintiff : Mr. W. Mwenya from Messers Lukona Chambers.  
For the Defendant : In person

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***RULING***

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**CASES REFERRED TO:**

1. *Towela Akapelwa (Suing as Induna Ineta) and three others v Josiah Mubukwanu Litiya Nyumbu Appeal No. 004 of 2015*
2. *American Cyanamid Co v Ethicon Co Ltd (1975) AC 396*
3. *Turnkey Properties Limited v Lusaka West Development Corporation (1984) Z.R 85*
4. *Whidden Kanugwe v Zambia Sugar PLC Appeal No, 192 of 2000*

**LEGISLATION AND OTHER WORKS REFERRED TO:**

1. *The High Court Act Chapter 27 of the Laws of Zambia.*
2. *The Rules of the Supreme Court (Whitebook) 1999 edition.*

## **1.0 INTRODUCTION**

1.1 This is a Ruling on an application by the Plaintiff for an order of interim injunction. A brief historical background leading to this application is that the Plaintiff on the 27<sup>th</sup> November, 2024 commenced this matter by way of a writ of summons accompanied by a statement of claim. The writ is endorsed with the following claims:

- I. Damages for defamation of character arising from the libelous allegations and unsubstantiated falsehoods perpetrated by the Defendant herein without any justifiable cause, for***  
***1<sup>st</sup> Plaintiff-ZMW 2,500,000.00***  
***2<sup>nd</sup> Plaintiff-ZMW 1,500,000.00***
- II. Aggravated damages for continuous acts of libel by the Defendant herein to be assessed by the learned District Registrar of the High Court.***
- III. An order of interim injunction to stop, refrain and restrain the Defendant herein from continued defamation of the Plaintiff's in whatever form, manner or forum or whatsoever until the final determination of this action.***
- IV. An order permanent injunction against the Defendant herein from defaming the Plaintiffs***

***herein whatsoever form, manner or forum or whatsoever.***

**V. Cost.**

**2.0 THE APPLICATION**

2.1 The application for an interim injunction was made pursuant to **Order 27 rule 4 of the High Court Rules** which provides that:

**Order XXVII Rule 4**

*“In any suit for restraining the defendant from the committal of any breach of contract or other injury, and whether the same be accompanied by any claim for damages or not, it shall be lawful for the plaintiff, at any time after the commencement of the suit, and whether before or after judgment, to apply to the Court or a Judge for an injunction to restrain the defendant from the repetition or the continuance of the breach of contract or wrongful act complained of, or the committal of any breach of contract or injury of a like kind arising out of the same contract, or relating to the same property or right, and such injunction may be granted by the Court or a Judge on such terms as to the duration of the injunction, keeping an account, giving security or otherwise, as to the Court or a Judge shall seem reasonable and just:*

*Provided that any order for an injunction may be discharged, varied or set aside by the Court or a Judge, on application made*

*thereto by any party dissatisfied with such order.”*

2.2 This Court granted the Plaintiff an ex parte interim injunction Order on the 4<sup>th</sup> December, 2024. The Order was granted pending the inter-parties hearing of the injunction application.

### **3.0 AFFIDAVIT EVIDENCE**

3.1 The affidavit in support of the ex parte summons for an order of interim injunction was sworn by Wilfred Mwenya and Stanley Kasali, the Plaintiffs herein. They deposed that on or about 23<sup>rd</sup> April 2020, the 2<sup>nd</sup> Plaintiff commenced an action against squatters who included the Defendant herein, who had illegally occupied part of the 2<sup>nd</sup> Plaintiff's land at Comesa Market. The action was under cause No. 2020/HP/0409. A copy of the originating summons was exhibited and marked "WS1".

3.2 It was the deponent's further averment that on 6<sup>th</sup> June 2024, the High Court delivered a Ruling through an Order in respect of cause No. 2020/HP/0409. A copy of the Order was exhibited and marked "WS2".

3.3 That after the Order the Defendant commenced an action on 14<sup>th</sup> June, 2024 under cause no 2024/HP/0844 against the 2<sup>nd</sup> Plaintiff. The originating process was later amended on 26<sup>th</sup>

June 2024. A copy of the amended writ of summons was exhibited and marked “WS3”.

- 3.4 That the 1<sup>st</sup> Plaintiff, through Messers. Lukona Chambers, has conduct of cause No. 2024/HP/0844, which is still before the High Court. That in the course of the proceedings under cause No. 2024/HP/0844, the Defendant has made and continued to make unsubstantiated allegations against the Plaintiffs. That these allegations are all falsehoods and are not justifiable at all.
- 3.5 It was further averred that the false libelous allegations being made by the Defendant relate to corruption and lack of integrity by the Plaintiffs. That these false libelous allegations are being deliberately published in submissions by the Defendant under cause No. 2024/HP/0844 under the guise of privilege under judicial proceedings. That the Defendant has also defamed the Plaintiffs in an article he wrote to the Permanent Secretary in the Ministry of Local Government and Rural Development dated 20<sup>th</sup> October, 2024.
- 3.6 Furthermore, that the Defendant has also falsely alleged that the 1<sup>st</sup> Plaintiff is in joint construction of buildings with the 2<sup>nd</sup> Plaintiff which is a complete lie and aims at tarnishing the image of the 1<sup>st</sup> Plaintiff who has been engaged by the 2<sup>nd</sup> Defendant to represent the company under cause

No.2020/HP/0844. That the words of defamation complained of by the plaintiffs are:

- i. *You Maambo Haamaundu you have written a letter which show that Granny's Bakery wanted to kill me sometime back while the armed officers were there at his office and I also have that letter. And again Granny's Bakery with you Boss Haamaundu you are using armed officers to protect the workers when building on my plot-using fake title deed which was obtained wrongly or corruptly.*
- ii. *Attached are approved building plans to allow Mr. Husty Moffat Mwachilele to build on the above-mentioned place which Granny's Bakery don't have and is just building at my place without any law with lawyer Mwenya.*
- iii. *For Granny's Bakery to continue blocking me from my place is a criminal case which should be looked into very carefully now (and it is more than corruption of any kind).*
- iv. *Attached is a submission copy with it is attachments dated 07<sup>th</sup> November, 202. The title deed which Granny's Bakery is using of Plot Number LUSAK/3119401 is fake I have the evidence I Mr. Mwachilele. For to tell the truth you do not need a lawyer!*
- v. *Because of corruption Granny's Bakery is using a different plot number.*
- vi. *Where is independence to talk about on very 24<sup>th</sup> October when foreigners like Granny's Bakery are grabbing plots or anything from Zambians? And when you go to court, they don't obey the court. For they continue being at your plot while the case is still in court! Like they already know the outcome!*
- vii. *At his upstairs office Granny's Bakery there is a place where he wanted to kill me before this government and lawyer Mwenya of Lukona Chambers is just blindly making applications against my case blocking it from going to trial for no proper reason and he knows his client is a thief who wants to steal my property using tricks through lawyer Mwenya of Lukona Chambers and...*

- viii. *Granny's Bakery has used plot number 37405 Kafue Road Lusaka but the other plot number they used for corruption is there on record of this case at the High Court.*
- ix. *Granny's Bakery has shown that he does not fear the court of law...*

3.7 The copies of the five documents relied upon as containing libelous matter were exhibited and marked "WS4". That the Defendant has deliberately been using and continues to use court proceedings to defame the Plaintiffs without any lawful and justifiable reason.

3.8 That the Defendant has also made similar libelous false allegations which are unjustified and cannot be substantiated at all, to the Judicial Complaint Commission. That in the minds of right-thinking members of the public, the words complained of mean and may be understood to mean that the Plaintiffs are:

- i. *Corrupt*
- ii. *Lack integrity*
- iii. *Are undermining the judicial process by use of corruption*
- iv. *The 1<sup>st</sup> Plaintiff lacks professional integrity befitting the office of an advocate.*

3.9 That the words complained of will tend to lower the Plaintiffs in the estimation of right-thinking members of the public generally. That on 13<sup>th</sup> November, 2024, the Plaintiffs wrote

letters to the Defendant to withdraw the words complained of and offer an apology, the Defendant has refused to withdraw the words complained of and apologize for making libelous allegations and unsubstantiated falsehoods. Copies of the letters were collectively exhibited and marked "WS5".

3.10 That having received the letters of demand, the Defendant has continued in his libelous defamation of the Plaintiffs by writing a letter to the Judicial Complaint Commission. A copy of the letter was exhibited and marked "WS4". That the continued defamation of the Plaintiffs is being done deliberately by the Defendant to bring them into public ridicule and shame.

#### **4.0 AFFIDAVIT IN OPPOSITION**

4.1 In opposing the interim injunction, the Defendant filed an affidavit in opposition sworn by the Defendant himself. It was averred that the Plaintiff have misdirected Court by bringing unknown and unfounded claims arising from the unreasonable behavior of the Plaintiffs of having encroached onto the Defendant's land number 37407 Lusaka (which Maambo Hamahundu failed to remove from the system at the Ministry of Lands) leaving their land number 37405 and 37406 Lusaka which are indicated on the approved plan showing piece of lands as it can be seen in the exhibit produced and marked "HMM1".

- 4.2 It was also averred that as a result of the unreasonable behavior of the Plaintiffs wanting to take possession of the Defendants land, prompted the Defendant for file originating process by way of writ of summons accompanied by application for interim injunction under cause number 2024/HP/0844 and being presided by Justice Situmbeko Chocho. A copy of the order of mediation where the Plaintiffs proposed to buy the Defendants Land at K3,000,000 which the Defendant declined was exhibited and marked "HMM2".
- 4.3 It was averred that the Plaintiffs thereafter tried to buy off the Defendants land which the Defendant refused and immediately thereafter, engaged other agents like police officers at Comesa Police post who commenced harassing the Defendant with a view to take possession of the Defendant's land falsely.
- 4.4 It was averred that the aforesaid alluded defamatory words have never been there nor here as the Defendant has only focused on defending his land restraining the Plaintiff from robbing his land.
- 4.5 That the Defendant disputes the claimed sum of K4,000,000.00 by stating that the Plaintiffs intends to rob or deprive the Defendant on a day light and as a result of the Plaintiffs unreasonable behavior prompted the Defendant on the 26<sup>th</sup> February, 2025 and the 3<sup>rd</sup> March to write letters complaining

and seeking for intervention from relevant authorities. Copies of the letters were exhibited and marked “HMM3-4”.

4.6 That the Plaintiff’s application should forthwith be dismissed with costs in the sum of K8,000,000.00 for bringing the Defendant’s name into disrepute and inconvenience caused by the Plaintiffs and further that the Plaintiffs do with vacate the Defendant’s land number 37407 and maintain their land 37405 and 37406.

## **5.0 HEARING OF THIS MATTER**

5.1 At the hearing of this matter both parties relied on the documents filed.

## **6.0 ANALYSIS AND THE DECISION OF THIS COURT**

6.1 I have carefully considered the application for interim injunction before me, the affidavit in support of the parties’ respective positions filed in this matter. The central issue for determination in this application is whether or not this a proper case for this Court to confirm or discharge the ex parte interim injunction earlier granted to the Plaintiffs. I must start by reminding myself that this Court has discretionary power under Order 27 of the High Court Rules to grant an injunction. However, this power should be exercised judiciously, with care

and caution. In the case of *Towela Akapelwa (Suing as Induna Ineta) and three others v Josiah Mubukwana Litiya Nyumbu*<sup>1</sup>, the Supreme Court guided that judicial discretion

*is an armour which a judge should employ judiciously to arrive at a just decision. The same should not be left out to the whims and caprices of a party to the action”.*

6.2 Therefore, the grant of an injunction ought not to be issued unless there are circumstances that call for their grant. These circumstances are laid down in the *American Cynamid v Ethicon Co Ltd*<sup>2</sup> case where Lord Diplock made the following observations:

*“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.. 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 trial, the court should do on to consider whether the balance of convenience lies in favour of the granting or refusing the interlocutory relief that is sought”.*

I am further guided by the Supreme Court case of *Turkey Properties v Lusaka West Development Company*<sup>3</sup> that:

***“An injunction should not be used to the advantage of one party but to keep the status quo until the matter is decided at trial without prejudicing either party’s right”.***

Furthermore, the Supreme Court in the case of ***Whidden Kanugwe v Zambia Sugar PLC***<sup>4</sup> guided that:

***“The Applicant must establish a prima facie legal right to be protected by the injunction. He must also, after establishing the right, show that the balance of convenience is in his favour and that failure to give him an injunction will cause irreparable damage that cannot be atoned by damages”.***

6.3 In the current matter, the question that I should at this stage consider is whether the Plaintiffs have met the threshold test for injunctive relief. The Plaintiffs claims that the Defendant authored defamatory statement against them and has in evidence produced the statements. The Defendant on the other hand, has asserted quoting his own words that the *“defamatory words are neither here or there as the Defendant has only defended his land restraining the Plaintiffs from robbing his land”.*

6.4 It is my considered view that whether or not the words uttered by the Defendant are defamatory or not is a question of fact and of law. It is not appropriate for this Court to resolve the contention whether or not the words uttered by the Defendant is defamatory at this stage of the proceedings.

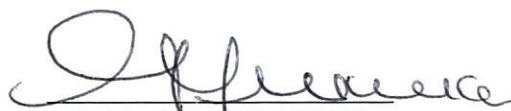
- 6.5 However, the question to be resolved at this stage is whether assuming the Plaintiffs allegations in the affidavits evidence to be true, can the Plaintiffs be entitled to obtain the remedy of injunction sought in this matter. My firm view is that the Plaintiffs has shown that there is a serious issue to be tried and I so hold.
- 6.6 The above finding of facts clearly reveals that there is a serious question to be tried in this matter and that the Plaintiffs has established that they have a good and arguable claim to the right which is sought to be protected.
- 6.7 In maintaining the status quo of the parties in this matter. It is my considered view that it is necessary in this matter to confirm the ex parte injunction granted to the Plaintiffs until the final determination of this matter or further orders of the Court.
- 6.8 The Defendant is hereby ordered to restrain either by themselves or their agents or otherwise howsoever to stop defaming the Plaintiffs in whatever form or forum or manner or whatsoever refrained and restrained from any form of defamation against the Plaintiffs until the final determination of this matter or further Orders of the Court.

6.9 Since the Plaintiffs was put to expense in this application, it is only fair that I award costs to the Plaintiffs, which costs must be taxed in default of agreement.

6.10 Leave to appeal to the Court of Appeal is hereby granted.

6.11 This matter shall come up for issuance of the Orders for directions on the 16<sup>th</sup> October, 2025 at 09:15 hours.

**DELIVERED AT LUSAKA THIS 15<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

A handwritten signature in black ink, appearing to read 'G.C. Chawatama', written in a cursive style.

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