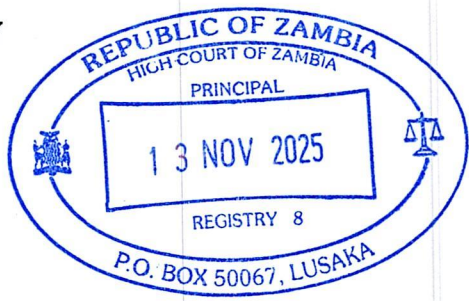


**IN THE HIGH COURT FOR ZAMBIA**  
**AT THE PRINCIPAL REGISTRY**  
**HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*

**2024/HP/0291**



**BETWEEN:**

**MORRESTER FARMS LIMITED**

**PLAINTIFF**

**AND**

**REUBEN HAAKALE HAMOONGA**

**1<sup>ST</sup> DEFENDANT**

**THE ATTORNEY GENERAL**

**2<sup>ND</sup> DEFENDANT**

**BEFORE HON. JUSTICE E. P. MWIKISA**

*For the Plaintiff: Mr. M. Mahenga-Messrs Chibesakunda and Co.*

*For the 1<sup>st</sup> Defendant: Ms. M. Mukwaiya- Messrs T.M.N. Legal Practitioners*

*For the 2<sup>nd</sup> Defendant: Ms. N. Nkhazi- Attorney General Chambers.*

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# **RULING**

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**Cases referred to:**

- 1) *American Cyanamid Co vs. Elthicon [1975] AC 396*
- 2) *Hilary Bernad Mukosa vs. Micheal Ronaldson (S.C.Z Judgment No. 7 of 1993)*
- 3) *Shell and BP Zambia Limited vs. Conidaris and Others (1975) ZR*
- 4) *Moonda Jane Mungaila Mapiko (suing on behalf of Mungaila Royal establishment) and Another vs. Victor Makaba Chande 2010 ZR 416 Vol. 2*
- 5) *Zimco Properties Limited v LAPCO Limited (1988-1989) ZR 92*
- 6) *Nottingham Building Society v Eurodynamic Systems [1993] FSR 468*
- 7) *Preston v Luck [1884] 27 Ch D 497*

**Legislation referred to:**

1) *The High Court Act, Chapter 27 of the Laws of Zambia.*

**1. Introduction and Background.**

1.1 This ruling emanates from an application filed by the Plaintiff for an injunction order dated 26<sup>th</sup> February 2024. The application was made pursuant to **Order 28** of the High Court Rules, Chapter 27 of the Laws of Zambia. The said application was supported by an affidavit of even date. The 1<sup>st</sup> Defendant opposed the application by filing an affidavit dated 6<sup>th</sup> March 2024.

1.2 The Plaintiff commenced an action against the Defendant by way of Writ of Summons and Statement of Claim dated 26<sup>th</sup> February 2024.

1.3 The Plaintiff filed on 30<sup>th</sup> July 2024 an application for a further affidavit in support of the injunction application.

**2. Affidavit evidence.**

2.1 It was deposed by one Edwardina Haigh, the Managing Partner in the Plaintiff.

2.2 It was deposed that there is a dispute concerning the road access from D153 Road in Chongwe to the Plaintiff's

farm. The dispute is that the access road linkage runs through Farm 9558/M, a farm owned by the 1<sup>st</sup> Defendant over which the Plaintiff and the members of the public have a right of access.

2.3 It was stated that the Plaintiff had the benefit of peaceful enjoyment of the access road (track) appearing in the diagram on Farm 667 as exhibited and marked "EHI". It runs from east to west and it existed before 1917 as indicated on the diagram for over 50 years until about 2017.

2.4 The plaintiff deposed that the 1<sup>st</sup> Defendant had continuously threatened and denied the Plaintiff from accessing the road which is the only access to its farm.

2.5 Furthermore, that the Plaintiff involved the Provincial planner for Lusaka Province who conducted an investigation into the issue. His finding was that the anomaly be rectified in line with the mandates under the Land Survey Act No. 188, the Lands Act No. 184 and the Lands and Deeds Registry Act No. 185. That the findings of the investigation were copied to the Plaintiff, the 1<sup>st</sup>

Defendant and the Town Clerk of Chongwe Municipal Council. The copy of the letter was exhibited and marked "EH3".

2.6 Furthermore, that the Plaintiff involved the Surveyor General who reconfirmed the Plaintiff's right to access over the access track on the basis that, the said access road is recognized and therefore legitimate access should be respected.

2.7 That the Plaintiff then wrote to the 1<sup>st</sup> Defendant demanding that he desists from threats and any further action that would compromise its access to its property. This letter was exhibited and marked as "EH6".

2.8 That on 13<sup>th</sup> February 2024, the Plaintiff and 1<sup>st</sup> Defendant were summoned at Palabana Police Post and were then referred to Chalimbana Police Station to lodge their dispute.

2.9 It was deposed that the Plaintiff has no other way of accessing its farm except through the access road, and that this has inconvenienced the Plaintiff as it relies on the said road to conduct its business. That the Plaintiff is into

commercial farming and its farm has 250 hectares of Rhodes grass fields, 6000 Rhodes grass bales, 52 hectares center pivot under construction for irrigation, 150 beef cattle in feedlot, 600 beef cattle and 50 pedigree brahman stud bulls that require constant maintenance. Thus, prohibiting the Plaintiff from accessing its farm will greatly prejudice it and this will cause it to suffer irreparable damage that cannot be atoned for by damages. An inventory of the farm was exhibited and marked "EH9".

2.10 That the Plaintiff has suffered and will continue to suffer irreparable damage if the Defendant is not restrained from blocking the road access. Furthermore, that unless restrained by the Court there is an appreciable risk that the Defendant will continue to restrict the Plaintiff access to its property and this will cause unnecessary hardships on the Plaintiff.

### **3. Skeleton arguments in support.**

3.1 The case of **American Cyanamid Co vs. Elthicon<sup>1</sup>** was relied upon to reinforce the position that the Applicant ought to show how he claims to be entitled to the right

which he is seeking to protect by injunction and he must show that if he was to succeed in establishing this right to a permanent injunction at trial, he could not be adequately compensated in damages for the refusal of the injunction.

3.2 Counsel argued that an injunctive relief is only granted to a person who establishes that he has a good and arguable claim to the right that he seeks to protect as espoused in the case of **Hilary Bernad Mukosa vs. Micheal Ronaldson**<sup>2</sup>. Thus, Counsel argued that the Plaintiff as a landowner has the right to access its land.

3.3 Furthermore, Counsel argued that there is a serious dispute between the parties and the Plaintiff has established a clear right to the relief it seeks. Counsel relied on the case of **Shell and BP Zambia Limited vs. Conidaris and Others**<sup>3</sup> where the Supreme Court was of the view that it would 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, and that mere inconvenience is not

enough. Thus, Counsel argued that denying the Plaintiff access to the farm would result in irreparable injury as there is no other access to the farm.

**4. Affidavit in opposition.**

4.1 It was deposed by one Reuben Haakale Hamoonga the 1<sup>st</sup> Defendant herein.

4.2 He deposed that he is the owner of Certificate of Title which relates to property known as L/9558/M and not Farm No. 9558 Palabana Chongwe. The certificate of title was exhibited and marked as "RHH1".

4.3 That there is no road reserve which traverses through his farm and as such no members of the public access the alleged road. A copy of an aerial photograph obtained from the Ministry of Lands was exhibited and marked "RHH2".

4.4 He stated that. he took legal ownership as well as occupation of Farm No. L/9558/M in 2012. That the road network alleged by the Plaintiff to have been in existence before 1917, is not depicted on the certificate of title relating to his property. Furthermore, that the Plaintiff is able to access its farm through road No. D153.

4.5 Furthermore, that the 1<sup>st</sup> Defendant was prompted to write to the Surveyor General seeking his indulgence in the matter of which he has not received any response.

4.6 That the alleged access road is not legitimately provided for and further reiterates that the Plaintiff will not suffer any damage as they already have access to Farm No. 667 through D153. On the other hand, he stated that he would suffer an injustice should the injunction be sustained as it will infringe on his right to quiet use and enjoyment of his property.

**5. Skeleton arguments in support of the opposition.**

5.1 Counsel submitted that the objective of interlocutory injunctions is to protect the Applicant against injury by violation of their rights for which they could not be compensated in damages recoverable in the action if the uncertainty were resolved in their favor at trial. Thus, Counsel argued that the 1<sup>st</sup> Defendant has demonstrated that there is a legitimate road accessible to the Plaintiff being Road D153 as shown in exhibit "RHH1".

5.2 It was argued that the 1<sup>st</sup> Defendant will suffer irreparable injury which cannot be atoned for by damages should the Plaintiff continue to use the alleged access road. Counsel relied on the case of **Moonda Jane Mungaila Mapiko (suing on behalf of Mungaila Royal establishment) and Another vs. Victor Makaba Chande**<sup>4</sup> and argued that the Plaintiff's adamant refusal to make use of road D153 but instead insists that it can only access its farm through the alleged access road created by the Plaintiff in the 1<sup>st</sup> Defendant's farm. Thus, the Plaintiff's claims are frivolous and vexatious.

5.3 Furthermore, Counsel asserted that the Plaintiff's concern is advancing conditions that are only favorable to it. That the main reason for the injunction is to stop the 1<sup>st</sup> Defendant from obstructing the right of way of the Plaintiff to Farm No. 667 Chongwe through the access road which passes through Farm No. 9558/M.

**6. Further affidavit in support of the injunction application.**

- 6.1 It was deposed by Mr. Chikosola Patrick Chuula, Counsel for the Plaintiff.
- 6.2 He deposed therein that there is a topographic map sheet number 1528B3 given to the Survey Department under the Ministry of Lands which was referred to in exhibit "EH10.
- 6.3 That the topographic map sheet is extremely important as it provides a clear insight on access road which give rise to the dispute in the case herein. The said topographic map sheet was exhibited and marked "CPC1".

**7. Affidavit in Opposition.**

- 7.1 It was deposed by the 1<sup>st</sup> Defendant herein. He stated that he has never had sight of exhibit "EH10" from the provincial planner of Lusaka. Furthermore, that a topographic map sheet published in 1981 depicts the land before the replanning by the Survey Department under the Ministry of Lands.
- 7.2 He deposed that his certificate of title was issued after the replanning, thus, it does not show any road reserve

traversing through the 1<sup>st</sup> Defendant's property known as Farm No, L/9558/M.

**8. Hearing.**

8.1 When the matter came up for hearing on 22<sup>nd</sup> October 2024, both counsel for the Plaintiff and 1<sup>st</sup> Defendant requested the Court to render its Ruling based on affidavit evidence.

**9. Consideration and Determination.**

9.1 I have carefully considered the affidavit evidence as well as the skeleton arguments on record. The case of **American Cyanamid vs. Ethicon**<sup>(1)</sup> is instructive in cases such as this. In that case, the Court held as follows;

**“1. it was not the Court's role to consider conflicting evidence in respect of an interim application. This was a matter for trial.**

**2. All that was necessary at this stage was that the claimant should show that there was a real issue to be tried.**

**3. The Court should consider whether damages were an adequate remedy for a claimant if an injunction was not granted. If so, an injunction would not be available.**

**4. If damages were not an adequate remedy, then the Court should then ask whether the claimant would be able to give an undertaking in damages to the Defendant.**

**5. If it was considered that there was any difficulty regarding the availability of damages on either side,**

**the Court should consider the balance of convenience between the parties.**

**6. If these factors were evenly balanced, the Court should consider maintaining the status quo.**

9.2 I wish to state at this point that in an application for an interim injunction, the Court should satisfy itself that there is a serious question to be tried at the hearing and that on the facts before it, the Plaintiff is entitled to a right to relief. In the case of **Hillary Bernard Mukosa v Michael Ronaldson**<sup>(2)</sup> the Court held that:

***“An injunction would only be granted to a plaintiff who established that he had a good and arguable claim to the right which he sought to protect.”***

9.3 In casu, the record shows that the Plaintiff being the owner of Farm No. 667 Chongwe is alleging that there is an access linkage which runs through Farm 9558/M owned by the 1<sup>st</sup> Defendant. While on the other side, the 1<sup>st</sup> Defendant is of the view that there is no road reverse which traverses his farm.

9.4 In light of the above, I am of the considered view that there is a serious question to be tried at trial because prima facie, there is a dispute concerning the access road as evidenced by the documents on record. The serious

question to be tried herein being whether there is an access road traversing through the 1<sup>st</sup> Defendant's farm. I am thus satisfied and find that the Plaintiff herein has shown that there is a serious question to be tried at trial and that the Plaintiff herein is entitled to a right to relief.

9.5 Further, it is trite that if the Court finds that there is a serious question to be tried on the merits of the substantive claim, the Court should consider whether the Plaintiff will be adequately compensated by an award of damages at trial as stated in the case of **Shell and BP Zambia Limited v Connidaris and Others**<sup>(3)</sup>. The Supreme Court, in that case held, inter alia, that:

**“(vi) 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.”**

9.6 In the affidavit in support, the deponent stated that the 1<sup>st</sup> Defendant has constantly threatened to deny the Plaintiff access to its farm. The 1<sup>st</sup> Defendant however denied the

allegation on the basis that there is no access road in his farm branching from road No. D153 to the Plaintiff's farm.

9.7 What is clear from the above is that there has been denial usage of a road although the 1<sup>st</sup> Defendant has a different view. The right to relief is thus clear because there has been denial of usage of a road. As stated in **the American Cyanamid case**, it is not the role of the Court to consider conflicting evidence at this point. The conflicting evidence in this case being that the Plaintiff is claiming that there is an access road through the 1<sup>st</sup> Defendant and the 1<sup>st</sup> Defendant is denying the same.

9.8 In the case of **Zimco Properties Limited v LAPCO Limited**<sup>5</sup>, the Supreme Court 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.”***

9.9 In the case of **Nottingham Building Society v Eurodynamic Systems**<sup>6</sup>, it was observed that the balance of convenience test may be expressed in terms of whether

the risk of injustice if the injunction is refused, outweighs the risk of injustice if the injunction is granted.

9.10 I am of the considered view that the Plaintiff has demonstrated that there is no other way of accessing its farm except through the access road D153. Furthermore, the Plaintiff has also demonstrated that its commercial farming business relies on the road giving it access through the 1<sup>st</sup> Defendant's farm to transport its products and to receive deliveries and without the grant of this injunction, irreparable injury will be occasioned on the Plaintiff which cannot adequately be atoned for by damages. This, in my view outweighs the injustice that will be occasioned to the 1<sup>st</sup> Defendant, if any, if the injunction is granted. I am of the considered view that the 1<sup>st</sup> Defendant will have nothing to lose if the injunction is granted especially that he deposed that the alleged access road is not legitimately provided for.

9.11 In the case of **Preston v Luck**<sup>7</sup>, Cotton LJ had this to say:

***“The object of an interim injunction is to keep things in status quo, so that if at the hearing, the plaintiffs obtain a judgment in their favor, the defendants will***

***have been prevented from dealing in the meantime with the property in such way as to make that judgment ineffectual.”***

9.12 It is in light of the above that I am of the considered view that the status quo be maintained in relation to the dispute in issue. This means that the Plaintiff should continue using the access road to its farm until final determination of the matter.

**10. Conclusion.**

10.1 I accordingly grant the Order of Interim Injunction. I hereby confirm the order of interim injunction granted on 28<sup>th</sup> February, 2024.

Leave to appeal is granted.

Dated at Lusaka the .....13<sup>th</sup>..... day of .....November....., 2025



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**ELITA PHIRI MWIKISA**  
**JUDGE**