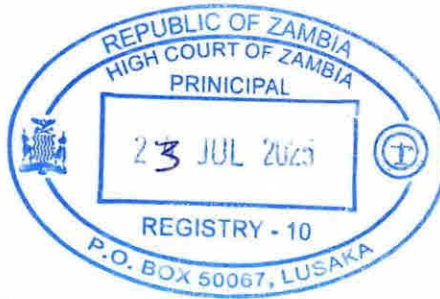


IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2024/HP/1277

BETWEEN:

ALLAN KASALWE KAMPAMBA
MELVIN MUMBA KAMPAMBA
GRACE KAMPAMBA
JULIUS KAMPAMBA
BARBARA LUPUPA KAMPAMBA
STANLEY KAMPAMBA



1ST PLAINTIFF
2ND PLAINTIFF
3RD PLAINTIFF
4TH PLAINTIFF
5TH PLAINTIFF
6TH PLAINTIFF

AND

LILIAN CHOLA
PHIFILO KABEMBA
SAKANYA BANDA
OTHERS UNKNOWN

1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT
4TH DEFENDANT

Before the Honourable Mrs. Justice R. Chibbabbuka on the 23rd day of July 2025

For the Plaintiffs: Mesdames TMB Advocates
For the Defendants: Messrs O.B Chilembo & Company

RULING

Cases referred to:

1. *Shell and BP Zambia Limited vs Conidaris and other* (1975) Z.R 174
2. *Royal Oak (PVT) vs Lusaka city council and another* (2012) 3 ZR 607
3. *Zimco properties limited vs Lapeco Limited* (1988-1989) ZR 92
4. *American Cyanamid Co vs Ethicon* (1975) A.C 396
5. *Gideon Mundanda vs. Timothy Mulwani and Others* (1987) ZR 29
6. *Preston vs Luck* (1884) 27 Ch D

Legislation referred to:

The High Court Act, Chapter 27 of the Laws of Zambia

The Lands and Deed Registry Act Chapter 185 of the Laws of Zambia

Other works referred to:

Halsbury's Laws of England Vol. 38

1.0 Introduction

This ruling pertains to the plaintiffs' application for an interim injunction, which was filed on 9th September, 2024, by summons made pursuant to *Order 27* of the *High Court Rules, Chapter 27* of the *Laws of Zambia*. The plaintiffs seek an order of this court restraining the defendants, their servants or agents from entering and dealing, in any way, with the property known as Farm No. 9239/M pending the determination of this action.

2.0 The Plaintiff's Affidavit in Support

The plaintiffs' application is supported by an affidavit of even date as the summons, deposed to by the 1st plaintiff. He deposes that the plaintiffs are all children of the late Mr. Denis Kampamba (the deceased) who was an employee of Zambia Consolidated Copper Mines Limited (ZCCM) and worked under various divisions of the company. In the 1990s, ZCCM embarked upon the sale of its houses to its employees. In 1994, the deceased was offered and subsequently purchased property known as number L/9239/M. The sale transaction was completed in 2004 when the deceased obtained a certificate of title to property known as number L/9239/M. On the 18th July, 2013, the deceased died intestate, and on the 20th November, 2018, the 4th plaintiff was appointed the Administrator of the deceased's estate, and the subject property vested in him.

On the 27th May, 2019, the beneficiaries of the deceased resolved to vest the property in all the beneficiaries by executing a deed of vesting assent and subsequently obtained a certificate of title as tenants in common in equal shares.

On 23rd June, 2022, the plaintiffs created subdivision D of Lot No. 9239/M which was transfer to Peter Teddy Banda and they were issued with certificate of title number CT-128194 for the remaining extent. The plaintiffs at one time misplaced the original certificate of title but they obtained a duplicate copy of the certificate of title relating to the property. The plaintiffs have enjoyed quiet possession, and ownership of the property for more than twenty years since the property was purchased by their deceased father. Around July and August 2024, a group of illegal trespassers consisting of the defendants unlawfully entered onto the plaintiffs' land and begun illegally cutting down trees and

subdividing and destroying buildings on the property. The incidents were reported to the police to prevent the defendants from entering and dealing with the property but to no avail. The defendants are aggressive and hostile to the plaintiffs. The plaintiffs, on 24th July, 2024, issued a letter of demand to the 1st and 2nd defendants, who were known as the leaders of the group, to desist from entering and conducting illegal activities on the property but the defendants took the matter to the District Commissioner at Kalulushi. The said office called for a meeting at which the plaintiffs produced their certificate of title relating to the dispute. At the conclusion of the meeting, all parties were satisfied that the property belonged to the plaintiffs.

The defendants who claim to be members of the United Party for National Development (UPND), through the 3rd defendant, have continued to trespass on the plaintiffs' land and continued to illegally subdivide the plaintiffs' land. The defendants have escalated their devises to harassing and physically assaulting the plaintiffs' caretaker and other workers on the property. The defendants are escalating violet attacks on the workers at the property and the assaults that are being occasioned to the workers are brutal. The defendants are acting unlawfully and their actions are dangerous to the lives of the plaintiffs' workers on the property. The plaintiffs are being deprived of use and possession of their property. The defendants have destroyed the established beacons on the property and destroyed the plaintiffs tomato farming field without any regards to the plaintiffs' rights. Despite the plaintiffs' attending several meetings with the defendants and others to amicably resolve the issue relating to the continued interference with the plaintiffs' rights to the property by trespassing on the property, no resolve has been reached.

The defendants have no bona fide defence to the plaintiffs' action herein as they are not owners of the property in any way and their actions amount to trespass to the property. On 29th August, 2024, the plaintiffs' issued a final demand letter to the defendants to immediately stop trespassing on the plaintiffs' property, which demand has not been respected. The plaintiffs will suffer irreparable damage as the defendants are illegally subdividing the property and escalating the number of trespassers on the property. The continued cutting down of trees is causing environmental degradation as the area where the trees are located serves its purposes for preserving the water table on the property.

2.1 The Plaintiffs' Skeleton Arguments in Support.

The plaintiffs filed skeleton arguments in support of their application wherein counsel referred this court to *Order 27 rule 1* of the *High Court Rules, Chapter 27 of the Laws of Zambia* as the law that empowers this court to grant the order sought. On whether the plaintiffs have a clear right to the relief sought, counsel argued that the plaintiffs are legal and beneficial owners of the subject property for which they have been issued with a certificate of title which is conclusive ownership of the plaintiffs' right to the property. The defendants have not been authorised to enter the property in any way. The defendants are trespassing on the property and causing damage to the property. Counsel referred to *Section 33 (c)* of the *Lands and Deeds Registry Act*, which provides as follows:

"A certificate of title shall be conclusive as from the date of its issue and upon and after the issue thereof, notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the president or otherwise, which but for parts III to VII might be held to be paramount or to have priority; the registered proprietor of the land comprised in such certificate shall, except in case of fraud, hold the same subject only to such encumbrances, liens, estates or interests as may be shown by such certificate of title and any encumbrances, liens, estates or interests created after the issue of such certificate as may be notified on the folium of the register relating to such land but absolutely free from all other encumbrances, liens, estates or interests whatsoever:

(c) Except so far as regards any portion of land that may be erroneously included in the certificate of title, evidencing the title of such registered proprietor by wrong description of parcels or of boundaries..."

Counsel further relied on *Section 34 (1) (d)* of the same Act which provides that:

"(1) No action for possession, or other action for the recovery of any land, shall lie or be sustained against the Registered proprietor holding a certificate of title for the estate or interest in respect to which he is registered, except in any of the following cases, that is to say

(d) the case of a person deprived of or claiming any land included in any certificate of title of other land by misdescription of such other land, or of its boundaries, as against the registered proprietor of such other land, not being a transferee, or deriving from or through a transferee, thereof bona fide for value.”

Counsel argued that based on the cited provisions of the law, the plaintiffs clearly have a right to the relief sought. Counsel referred to the Halsbury's Laws of England Vol. 38 in paragraph 1205 at page 738 in arguing that every unlawful entry by one person on land in possession of another is trespass for which an action lies although no actual damage is done. That the plaintiffs have always had exclusive possession of the property and are entitled to immediate possession of the property. The defendants are not entitled to possession of the property in any way. The defendants are entering the property with a view to settle and subdivide to others.

As regards whether or not the plaintiffs will suffer irreparable injury which cannot be atoned for by an award of damages, counsel relied on the case of **Shell and BP Zambia Limited v Conidaris**¹ in arguing that injunctions are necessary to protect plaintiffs from irreparable injury. That irreparable injury is injury which is substantial and cannot be adequately remedied or atoned for by damages. Counsel argued that the plaintiffs in *casu* stand to suffer irreparable injury which cannot be atoned for by damages, as the continued trespass onto their land and cutting down of trees is causing environmental degradation as the area where the trees are located serves its purposes for preserving the water table on the property. That the defendants are also damaging the developments on the land, are subdividing the property which is increasing the number of trespassers on the property. The plaintiffs are being deprived of use and exclusive possession of the property and no amount of damages will compensate the plaintiff for the damage and loss of their property. There is also a continued destruction of properties and violent attacks on the workers at the property which threatens their lives at the hands of the illegal trespassers which can only be tamed by an order of interim injunction as the trespassers seemingly have no regard to any interventions even by the police. Counsel referred to the case of **Royal Oak (PVT) vs Lusaka City Council and Another**² to buttress the submission that where damages are an inadequate remedy, the court must grant an interim injunction.

As regards the balance of convenience, counsel argued that the same tilts in favour of granting the plaintiffs an injunction so that the status quo is maintained while they challenge the alleged illegal trespass on their land. Counsel referred to the case of **Zimco Properties Limited vs Lapco Limited**³ to buttress the argument. Counsel concluded the arguments by praying that the order sought be granted.

3.0 The Defendants' Affidavit in Opposition

In opposing the application, the defendants filed an affidavit in opposition on 1st October, 2024, wherein the 1st defendant deposed that other defendants and herself have been occupying the idle and unoccupied land. On 21st September, 2024, the defendants conducted a search at the Ministry of Lands which revealed that the deceased was issued with a certificate of title no. 25017 in respect of the subject property measuring 6.5485 hectares only. The 4th plaintiff was appointed as administrator of the deceased's estate and was issued with a certificate of title no. CT.54717 in respect of the subject property measuring only 6.5485 hectares. On 23rd June, 2022 the plaintiffs issued a deed of transfer to Peter Teddy Banda in respect of subdivision D, and they were issued with certificate of title no. CT.128194 for the remaining extent of the subject property measuring 6.5485 hectares only.

That the certificate of title no. CT.128194 measuring 37.3912 hectares is forged and superimposed on the other land than the extent of the land issued to the deceased which was measuring only 6.5485 hectares. The certificate of title measuring 37.3912 hectares is fraudulent as the claimant has not exhibited any minute nor clearance from the Ministry of Land for extension of land from the original 6.5485 hectares to 37.3912 hectares. The defendants are some of the original applicants who upon identifying idle and vacant land applied for such land at the Kalulushi Municipal Council which application is being processed. The plaintiffs attempted to silence them with a K20,000.00 but they refused and are now surprised that the plaintiffs have annexed more than 30 hectares to their purported title on L/9239/M. She and the other defendants have been cultivating on the various portions of land from as far back as early 2000. To maintain the status quo, the court should impose an injunction on both parties until final determination of this action.

3.1 The Defendants' Skeleton Arguments in Opposition.

There were no skeleton arguments on the court's record from the defendants.

4.0 The Plaintiffs' Affidavit in Reply

In reply to the defendants' affidavit, the plaintiffs' filed an affidavit in reply on 11th October, 2024 which was deposed to by the 4th defendant. The deponent restated what is contained in the affidavit in support, save to add that the plaintiffs have produced a certificate of title relating to the property including diagrams duly approved by the government surveyor. The printouts being relied on by the defendants are not an official search. The plaintiffs' parcel of land, according to diagram number 508/1990, has always been 37.3912 hectares since 1994. The plaintiffs did not forge any documents. The subject land was never idle and vacant but has always been on title, and the same does not belong to Kalulushi Municipal Council but belonged to ZCCM IH. The plaintiffs never offered the defendants any money. The defendants have not been on the land since early 2000 as claimed.

5.0 At the Hearing

Pursuant to *Order 30 Rule 6A of the High Court (Amendment) Rules, 2020*, the hearing of this application was dispensed with.

6.0 The Decision of the Court

I have carefully considered the plaintiff's application for an order of injunction which by definition is a judicial order whereby the court orders a party to refrain from doing specified acts pending the determination of the parties' rights. Injunction orders are discretionary and not awarded as a matter of right. The plaintiffs' application has been made pursuant to *Order 27 rule 1 of the High Court Rules* which provides as follows:

"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 fit 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.....”

In the case of **American Cyanamid Co. v Ethicon Ltd**⁴, the House of Lords established the three-step outline for interlocutory injunctions, which are that:

1. Whether or not there is a serious question to be tried
2. Whether or not damages are an adequate remedy? If damages are adequate, injunctive relief is usually inappropriate.
3. Where the balance of convenience lies.

The dispute in this matter relates to property ownership, particularly whether the plaintiffs are the beneficial owners of Farm No. 9239/M, Copperbelt. If so, the extent of the land owned by them. This is clearly a question that demands a full trial of the action. The defendants have also raised serious allegations of fraud in their pleadings. On the evidence before me, there are unquestionably serious questions to be tried.

The next test to be considered is if damages would be an adequate remedy in the event of success in the matter. In the **Shell and BP Zambia Limited** case, the Supreme Court defined irreparable injury to mean:

“injury which is substantial and can never be adequately remedied or atoned for by damages not injury which cannot possibly be repaired”.

If therefore, the plaintiffs herein can be adequately compensated by an award of damages and the defendants would be in a position to pay the damages, then an injunction should not be granted irrespective of how strong the plaintiffs’ case may appear to be. As I pointed out above, the subject matter before the court is land, and in matters which border on an interest in land, the law clearly establishes that damages cannot adequately compensate a loss of interest in a particular piece of land. This is the position of the law in a plethora of cases such as the case of **Gideon Mundanda vs. Timothy Mulwani and Others**.⁵ What should be determined by this court is whether the defendants’ actions are likely to cause the plaintiffs harm which cannot be atoned for in damages. The plaintiffs have in their affidavit in support of this application alleged that the defendants have destroyed the established beacons on the property, destroyed

the plaintiffs tomato farming field, are illegally subdividing the property, cutting down trees and have attacked the plaintiffs' caretaker and workers. None of the foregoing have been categorically denied by the defendants in their opposing affidavit. This court cannot afford not to grant the injunction because should it not grant one, the defendants may proceed with their acts which may prejudice the plaintiffs.

As regards the balance of convenience, I find that the same lies in granting the injunction. It is important for the court to maintain the status quo pending the determination of the main matter. In the English case of **Preston vs Luck**⁶, the court stated as follows:

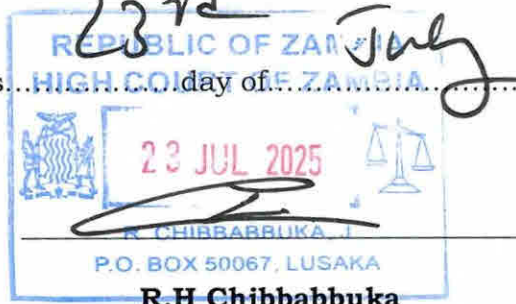
"The object of an interlocutory injunction is to keep things in status quo, so that if at the trial the plaintiffs obtain a judgment in their favour, the defendants will have been prevented from dealing in the meantime with the property in such a way as to make the judgment ineffectual."

The upshot of this application is that it succeeds. The defendants, their agents or servants, are hereby restrained from unlawfully entering the subject land and dealing, in any way, with the property known as Farm No. 9239/M pending the determination of this action. Disobedience of this Order constitutes contempt of court, a matter this Court takes extremely serious and will not permit to go unchecked.

Costs of this application are awarded to the plaintiffs, to be taxed in default of agreement.

Leave to appeal is hereby granted.

Dated at Lusaka this 23rd day of July 2025



A blue rectangular court stamp from the High Court of Zambia. The stamp contains the text: "REPUBLIC OF ZAMBIA", "HIGH COURT OF ZAMBIA", "23 JUL 2025", "R. CHIBBABBUKA, J.", and "P.O. BOX 50067, LUSAKA". A handwritten signature in black ink is written over the stamp. To the right of the stamp, there is a horizontal line extending to the right.

R.H Chibbabbuka
HIGH COURT JUDGE