

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY**

HOLDEN AT LUSAKA
(Civil Jurisdiction)

BETWEEN:

RITA MWANZA

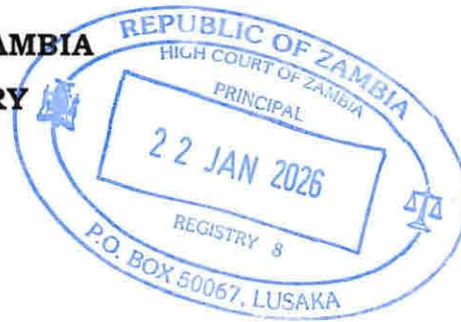
DICKSON KAMANGA

AND

JOSEPH MUSOWYA

RODGERS JUMA BUKENE
THE ATTORNEY GENERAL

2024/HP/1438



1ST PLAINTIFF

2ND PLAINTIFF

1ST DEFENDANT

2ND DEFENDANT

3RD DEFENDANT

Before the Hon. Mrs. Justice R. Chibbabbuka on the 22nd day of January, 2026.

For the Plaintiffs: Ms. S. Mweetwa, Messrs. Kamwi Andeleki Legal Practitioners

For the 1st Defendant: Mr. N. Siwila, Messrs. Mulungushi Chambers

For the 2nd Defendant: Mr. S. Mubanga, Messrs. Hibajene Mulunda Advocates

For the 3rd Defendant: Mr. M. Njaba, State Advocate, Attorney General's Chambers

RULING

Cases referred to:

1. *American Cyanamid Company vs Ethicon Limited (1975) A.C 396*
2. *Hilary Bernard Mukosa vs Micheal Ronaldson (1993 - 1994) Z.R. 2*
3. *Shell & BP Zambia Ltd vs Conidaris & Others (1975) ZR 174*
4. *Bernard Kutalika vs Dainess Kalunga SCZ/73/2013*
5. *Kekelwa Samuel Kongwa vs David Nkhata Appeal No. 102 of 2013*

Legislation referred to:

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

Other works referred to:

Atkin's Court Forms, 2nd edition, Volume 22 (1), 1996 issue

1.0 Introduction

1.1 This ruling pertains to the plaintiffs' application for an interim injunction, which was filed on 8th October, 2024, by summons made pursuant to *Order 27 Rule 1* of the *High Court Rules, Chapter 27* of the *Laws of Zambia*.

2.0 The Plaintiffs' Affidavit in Support

2.1 In support of their application, the plaintiffs jointly deposed to an affidavit. They deposed that on the 24th December 2011 and 25th December 2010 the 1st and 2nd Plaintiffs respectively, purchased property in Kapila Village of Chief Mungule area, Chibombo District. That upon purchasing the said land, the 1st Plaintiff utilized the land to rear livestock. Before she could erect any structures on the land, the 1st Defendant, who had just taken up the position of Headman Kapila, instructed her to halt the construction project as the land was subject to a dispute. Whilst she was waiting for the go ahead from the 1st Defendant to proceed with her building plans, the 1st Defendant converted a huge portion of the customary land to leasehold without the consent of any of the villagers that would be affected by his decision. The 1st Defendant obtained certificate of title No. 44533 relating to Lot No. 23541/M which includes their parcels of land.

2.2 The 1st Defendant is not entitled to the Plaintiffs' parcels of land included under Lot No. 23541/M. Around October 2018, the 2nd Defendant erected a wire fence on the 1st Plaintiff's piece of land. The Plaintiff approached the 2nd Defendant's agent whom she informed that the wire fence was erected on her land but he ignored her warning and went ahead to erect a structure, though it is incomplete and inhabitable. It later came to their attention that on 9th August, 2024, the 2nd Defendant had acquired a certificate of title on the land that

belongs to the 1st Plaintiff under Lot No. 23541/M/A. At the time the 1st Defendant was converting the said piece of land from customary land to State land, he had knowledge of the fact that part of the land he acquired title to belonged to the Plaintiffs. The 2nd Defendant had knowledge that the property he was obtaining title to was highly encumbered, and hence he is a purchaser for value with prior notice of the fraud that was involved in obtaining the parent certificate of title.

2.3 Somewhere around the 17th April, 2023, the 1st Defendant sent people to start clearing the 2nd Plaintiff's land and bringing down the wire fence which was there. Further, the 1st Defendant on 1st May, 2023 sent people to offload sand and quarry dust at the 2nd Plaintiff's piece of land. The Plaintiffs have on several occasions pleaded with the 1st and 2nd Defendants to desist from their activities but this has proved futile as evidenced by the selling of land by the 1st Defendant, and the acquisition of Title by the 2nd Defendant. If the 1st and 2nd Defendants and their agents are not restrained from interfering, selling or undertaking any activities on the pieces of land, they will continue to carry out activities that disadvantage the Plaintiffs. If this application is not granted, they will suffer irreparable damage that cannot be atoned for as land is always appreciating and not depreciating.

3.0 The Plaintiffs' Skeleton Arguments

3.1 In support of the application, the plaintiffs filed skeleton arguments wherein counsel referred the court to the provisions of *Order 27 Rule 1* of the *High Court Rules* and *Order 29 Rule 1* of the *Rules of the Supreme Court of England, 1999 edition* as the law that empowers this court to make the order sought. That there are established principles that the court must consider when faced with an injunction application which were set out in the case of **American Cyanamid Company Limited vs Ethicon Limited**¹ That the applicant must show that he

has a good arguable claim to the right he seeks to protect as was stated in the case of **Hilary Bernard Mukosa vs Micheal Ronaldson**² Counsel argued that on the facts contained in the pleadings and in the affidavit in support of this application, there is a serious question to be tried and the plaintiffs have established a good and arguable claim.

3.2 As regards the adequacy of damages, counsel relied on the case of **Shell & BP Zambia Ltd vs Conidaris & Others**³ in arguing that irreparable injury is injury which cannot be atoned for by way of damages, and that the court will not generally grant an injunction unless anticipated injury cannot be atoned for by an award of damages. Counsel argued that the subject matter of this action is land and hence if the Defendants are not enjoined, the plaintiffs may suffer injury which an award of damages cannot atone for. That the grant of the injunction will not determine the main action but will only act as a restraint. That Defendants may continue to convey land if not enjoined to the plaintiffs' detriment.

3.3 As regards where the balance of convenience lies, counsel argued that it tilts in favour of granting the injunction. Counsel urged this court to grant an interim Order of Injunction.

4.0 The 2nd Defendant's Affidavit in Opposition

4.1 The 2nd Defendant filed an affidavit in opposition on 13th November, 2024 wherein he deposed that the vast of the Plaintiffs' averments are within their peculiar knowledge. He erected the wire fence on the said property because the property legally belongs to him. At the time of erecting the wire fence, his workers never told him that they had been approached by the 1st Plaintiff. He acquired the land from the 3rd Defendant after conducting due diligence which revealed that that the land was free from encumbrance and was already sitting on a parent certificate of title in the 1st Defendant's name. He is a bona fide purchaser for value without notice.

4.2 The Plaintiffs have never pleaded with him nor have they at any time told him to stop conducting any activity on his property. He is the legal owner of the property aforesaid and that at the time of purchase, there were no issues surrounding the property in question. He has not disadvantaged or caused the Plaintiffs any loss. The Plaintiffs herein will not suffer any irreparable damage as a result of him occupying his land.

5.0 The 2nd Skeleton Arguments

5.1 In support of the affidavit, the 2nd Defendant filed skeleton arguments wherein counsel referred to the **Shell & BP Zambia Ltd** case in arguing that a Court faced with an injunction application must look at whether the injunction is necessary to protect the complainant from irreparable damage, whether there is a serious question to be tried, and where the balance of convenience lies. That it is unjustified for the Plaintiffs to seek an injunction when it is evident that the 2nd Defendant is occupying his land.

5.2 As regards the adequacy of damages, counsel relied on the **American Cyanamid Company Limited Shell & BP Zambia Ltd vs Conidaris & Others** case wherein the Court held that if damages in the measure recoverable at common law would be an adequate remedy and the Defendant would be in a financial position to pay them, then no interim injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage. That is not in the interest of justice for the Plaintiffs to seek an injunction when they will not suffer any damage. Counsel prayed for the dismissal of the application.

6.0 The 1st Defendant's Affidavit

6.1 The 1st Defendant filed an affidavit in opposition on 13th February, 2025 wherein he deposed that the certificate of title no. 43533 relating to Lot No. 23541/M was lawfully obtained. The Plaintiffs' claim that he converted a huge portion of customary land without the consent of the villagers is untrue. He

obtained the necessary consents and followed the due process in converting the land to leasehold. The Plaintiffs have not established a prima facie case with a probability of success to warrant the grant of an interim injunction. The balance of convenience does not favor the Plaintiff as the relief sought would unjustly prejudice the Defendants, who have lawfully acquired and possess legal rights over the subject matter of this dispute. The grant of the interim injunction would cause him undue hardship and financial loss.

7.0 The 1st Defendant's Skeleton Arguments

7.1 In support of the affidavit, the 1st Defendant filed skeleton arguments wherein counsel argued that the Plaintiffs have failed to satisfy the conditions for granting an injunction as laid down in the **Shell & BP Zambia** case. That the Plaintiffs have failed to demonstrate a clear right to the relief they seek, and have also failed to show that they will suffer irreparable damage if the injunction is not granted. Counsel argued that the balance of convenience does not favour the Plaintiffs. Granting the injunction will unjustly prejudice the Defendants who have lawfully acquired the land. Counsel prayed for the dismissal of the Plaintiffs' application with costs.

8.0 The Hearing

8.1 At the hearing, Counsel for the Plaintiffs relied on the affidavit and skeleton arguments filed in support of the application.

8.2 The 1st Defendant's Counsel equally relied on the documents filed in opposing the application. Counsel also argued that in accordance with *Section 33 of the Lands and Deeds Registry Act*, a certificate of title is conclusive evidence of ownership of land. That until the allegations of fraud are proved, the 1st Defendant remains the legal owner of the property. Counsel prayed for the dismissal of the Plaintiffs' application.

8.3 Counsel for the 2nd Defendant relied on the affidavit and Skeleton arguments filed in opposing the application.

5.0 The Decision of the Court

5.1 I am indebted to counsel for the arguments which I have carefully considered. The simplest definition of an interim injunction is that it is a judicial order whereby the court orders a party to refrain from doing specified acts pending the determination of the parties' rights. An order of injunction is discretionary and not awarded as a matter of right. The court in the case of **Bernard Kutalika vs Dainess Kalunga**⁴ stated that the court's discretionary power to grant an injunction must be exercised judiciously, having regard to all the facts and circumstances of each and every case.

5.2 There are relevant principles and tests to be applied when a court is faced with deciding whether or not to grant an interim injunction which were set out in the **American Cyanamid Company** case. Notably, that the court should address the question of whether or not on the facts raised there is a serious question to be determined at trial; whether damages would be an adequate remedy and the Defendant is in a position to pay; and lastly where the balance of convenience lies. On a perusal of the pleadings, there is a serious question regarding alleged infringements on the plaintiff's right to the property in dispute.

5.3 Having found that there is a serious question to be tried, the next question is whether an award of damages can adequately compensate the plaintiffs should the injunction not be granted and whether the Defendants are in a position to pay. The authors of **Atkin's Court Forms, 2nd edition, Volume 22 (1), 1996 issue**, state at page 59 that:

"An interlocutory or interim injunction, whether granted unconditionally or on such terms as the court thinks just, may be granted if it appears to the court to be just and convenient to do so in order to safeguard the position of one of the parties until his rights

can be finally determined at the trial of the action, and in particular to restrain any alleged wrongful act which, if not so restrained until the hearing, could not then be effectively remedied by the grant of an injunction or damages.” [Underling for court’s emphasis]

5.4 An injunctive order will be granted where it is shown to the court that an award of damages will not effectively remedy the wrong that would be occasioned to the claimant. In *casu*, the Plaintiff alleges that the 1st Defendant may sell the property before this matter is determined which will affect their legal rights to the property in question. In the **American Cyanamid** case, Lord Diplock stated that:

“If damages in the measure recoverable at common law would be an adequate remedy and the defendant would be in a financial position to pay them, then no interim injunction should normally be granted, however strong the plaintiff’s claim appeared to be at that stage.”

The plaintiffs have argued that an award of damages may not adequately compensate them for the injury they are likely to suffer if an order of injunction is not granted. Contrary to the forgoing assertion, the plaintiffs’ pleadings reveal that the plaintiffs have claimed an award of damages for loss of use and earnings, as well as damages for trespass in their writ of summons. The question then is, what effect a claim of damages has on an application for an order of injunction? The Supreme Court addressed this question in the case of **Kekelwa Samuel Kongwa vs David Nkhata**⁵ when it held that where in a statement of claim the Plaintiff acknowledges that damages would adequately compensate him for any loss of the use of the property in question, the burden was on the Plaintiff to establish that the Defendant has no financial capacity to pay the damages. In *casu*, the insertion of a claim for damages by the Plaintiffs in their statement of claim is an acknowledgement that an award of damages would suffice as compensation. The Plaintiffs having failed to establish that the Defendants are

not in a position to pay the said claimed damages, they cannot be granted an injunctive remedy.

I accordingly dismiss the injunction application with costs awarded to the Defendants to be taxed in default of agreement.

Leave to appeal is granted

Dated at Lusaka this 22nd day of January 2026

HIGH COURT OF ZAMBIA

22 JAN 2026

R.H Chibbabbuka
HIGH COURT JUDGE