

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

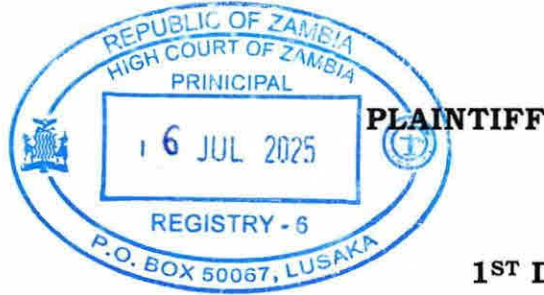
2024/HP/1824

BETWEEN:

VELUTEX LIMITED

AND

JULIUS ZULU
ANDREW MWIMA
MANUEL NG'AMBI
FRAZER KAONGA
ETHEL MALUMBE
ALFRED BANDA
ROBERT MUKENGAMI
AQUINO BANDA
GEORGE MULENGA
ZAMBIA NATIONAL HOLDINGS LIMITED



1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT
4TH DEFENDANT
5TH DEFENDANT
6TH DEFENDANT
7TH DEFENDANT
8TH DEFENDANT
9TH DEFENDANT
10TH DEFENDANT

Before the Honourable Mrs. Justice R. Chibbabbuka on the 16th day of July, 2025

For the Plaintiff: Mr. G. Hakainsi, Messrs L.M Chambers

For the Defendants: Ms. G.M Kabwe, Messrs Kabwe Grace Legal Practitioners

RULING

Cases referred to:

1. *American Cyanamid Company vs Ethicon Limited (1975) A.C 396*
2. *Mobil Oil Zambia Limited vs Msiska (1983) ZR 86*
3. *Shell and B.P Zambia Limited vs Conidaris and Others (1975) ZR 174*

4. *Harton Ndove vs National Educational Company of Zambia Limited (1980) Z.R 184*
5. *Turnkey Properties vs Lusaka West Development Corporation & Another (1984) ZR 85*

Legislation referred to:

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

The Rules of the Supreme Court of England, (Whitebook) 1999 Edition.

1.0 Introduction

This ruling pertains to the plaintiff's application for an interim order of injunction, which was filed on 21st February, 2025, by summons made pursuant to *Order 27 rules 1 and 4* of the *High Court Rules, High Court Act, Chapter 27* of the *Laws of Zambia* as read together with *Order 29* of the *Rules of the Supreme Court of England, 1999 edition*.

2.0 The Plaintiff's Affidavit in Support

The plaintiff's application is supported by an affidavit deposed to by one, Huang Jian Hua, the Managing Director in the plaintiff company. He deposes that sometime in 2018 the plaintiff entered into a Lease Agreement with Zambia National Holdings Limited to rent, manage and run Kenneth Kaunda House owned by Zambia National Holdings Limited, which lease was renewed in 2023. In November, 2024 the defendants herein started frequenting the Kenneth Kaunda House where they started spending nights at Premium Hotel housed at Kenneth Kaunda House, holding meetings and collecting money from the plaintiff's tenants on the pretext that they are now the new office bearers of the United National Independence Party (UNIP) and are entitled to be at Kenneth Kaunda House at any time. That the Plaintiff has on several occasions explained to the defendants that the plaintiff has no relationship with UNIP but has a relationship with Zambia National Holdings Limited which is an incorporated company separate from the party, which explanation the defendants have ignored.

The defendants allege UNIP and Zambia National Holdings are one and the same and that they are free to do anything at Kenneth Kaunda House and the hotel. The defendants have unjustifiably and inexcusably interfered with and interrupted the plaintiff's business as they have even started collecting money from the plaintiff's tenants at Kenneth Kaunda House. During one of the defendants' attempt to forcefully

enter Kenneth Kaunda House, they assaulted one of the plaintiff's managers, Mr. Charles Mukonde, who wanted to go to his office. The assault case was accordingly reported to the police. The defendants also caused damage to the premises by breaking the padlocks, office and hotel doors and harassed the Plaintiff's employees working at Kenneth Kaunda House and Premium Hotel. As a result of the defendants' actions and interference in the plaintiff's business, the plaintiff has suffered damages and loss of business and income from the hotel which loss now stands at the sum of K400, 000.00. The plaintiff undertakes to make good the direct loss that the defendants may suffer as a result of the court granting an injunction should the plaintiff's case fail. That the injunction be granted to maintain the status quo.

2.1 The Plaintiffs' Skeleton Arguments

The plaintiffs filed skeleton arguments in support of their application wherein counsel referred to *Order 27 rule 4* of the *High Court Rules* and *Order 29 rule 1* of the *Rules of the Supreme Court of England, 1999 edition* as the law pursuant to which this application has been made. Counsel argued that the principles to be considered when dealing with injunction applications as stated in the case of **American Cyanamid vs Ethicon**¹ have been established in this case. On whether there exists a serious question to be tried and whether there is a clear right to the relief sought, counsel relied on the case of **Mobil Oil Zambia Limited vs Msiska**² wherein the court directed that it is not enough for an applicant to show that he or she has an arguable case but that they must also demonstrate a clear right to the relief sought, which counsel argues the plaintiff herein has done. As regards adequacy of an award of damages, counsel relied on the case of **Shell & BP (Z) LTD vs Conidaris**³ wherein the Supreme Court held inter alia that:

"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 applicant from irreparable injury, mere inconvenience is not enough."

Counsel argued that the plaintiff in this case will suffer irreparable injury if the defendants are not restrained from further interfering with the plaintiff's business and the defendants' actions have a potential of frustrating customers. Counsel further referred to the case of **Ndove vs National Education Company of Zambia Limited**⁴

which is an instructive case on injunctions in a bid to further persuade this court to grant the order sought. Counsel prayed for the grant of the order sought.

3.0 The Defendants' Affidavit in Opposition.

The defendants filed an affidavit in opposition, deposed to by the 3rd defendant. He deposes that the plaintiff has correctly stated in paragraph 3 of its Affidavit in Support that it entered into a lease agreement with Zambia National Holdings Limited which has been produced and marked "HJH1". The exhibit does show that the letter was signed by the then UNIP President, Bishop Musonda Trevor Selwyn Mwamba. The reason the then President of UNIP signed the letter and lease agreement was because Zambia National Holdings Limited is a company which was established by UNIP even though it is a company with personal capacity to sue and be sued. That corporate governance requires that there be officers who should work through it and as such UNIP has that mandate to appoint the Board of Directors for Zambia National Holdings. The plaintiff is trying to mislead the court by stating that the defendants spent nights at the Premium Hotel when actually they only went there to request for rentals, lease agreement and inform the plaintiff that they are now the new Board Members of Zambia National Holding Limited.

The plaintiff is trying to mislead the court by stating that it is not aware that Zambia National Holdings Limited is supervised by UNIP yet the letter it has exhibited as "HJH1" does show that the then UNIP President is the one who signed the letter stating the terms of the lease agreement upon which they are basing its stay at the Kenneth Kaunda house. The plaintiff is trying to mislead the court by now trying to separate the relationship between UNIP and Zambia National Holdings Limited as it is aware that the two have a connection. The defendants only started to follow up on the plaintiff when no rentals were paid to Zambia National Holdings Limited for the past 7 plus years and now the offices of Zambia National Holdings Limited have been closed due to the plaintiff's non-payment of rentals. They visited the premises as Board Members of Zambia National Holdings Limited and hence it is misconceived for them to be sued as this action is aimed at causing an injustice to the rightful owners of the premises. Zambia National Holdings Limited has followed up with the plaintiff through letters and

verbal communication to establish the duration of the lease agreement they have with it is but no positive response was gotten from the plaintiff.

The commencement of this matter by the Plaintiff and obtaining the interim injunction was misconceived to prevent Zambia National Holdings Limited from getting its rentals for the past 7 years and also to account for the rentals. If indeed the plaintiff were paying the rentals to Zambia National Holdings Limited, to whom has it been paying to, since the accounts for Zambia National Holdings Limited show that no rentals have been received for the past 7 plus years, as this information will assist the new Board of Directors function well. The plaintiff is merely trying to delay Zambia National Holdings Limited from enjoying the rentals. Zambia National Holdings Limited has been evicted due to lack of finances when it was supposed to be receiving rentals from the plaintiff. The defendants have suffered and will continue to suffer loss of rentals from the plaintiff and other tenants in the building. The defendants should be paid damages as they have wrongly been sued in their personal capacity instead of as Board representatives for Zambia National Holdings Limited and UNIP. The interim injunction passed against the defendants as representatives of Zambia National Holdings Limited has far reaching consequences against Zambia National Holdings Limited properties and therefore there is need for this application to be heard sooner than the scheduled date of 3rd April 2025. Based on the averments he has made, it is necessary for Zambia National Holdings Limited and UNIP to be joined as parties to these proceedings otherwise the matter will be academic, since the defendants are just representatives of the rightful owners of the property.

3.1 The Defendants' Skeleton Arguments

The defendants filed skeleton arguments in support of the affidavit in opposition, wherein counsel argued that the principles established in the **American Cyanamid** case have not been satisfied. Counsel relied on the **Shell & BP** case in arguing that an injunction should not be granted where damages would be an adequate remedy. That damages in this matter would adequately remedy the injury the plaintiff has suffered and hence an injunction should not be granted. That no injury will be occasioned to the plaintiff which cannot be atoned for by an award of damages. Counsel argued that the

balance of convenience tilts in favour of not granting the order of interim injunction as no injury will be occasioned to the plaintiff.

Counsel referred to the case of **Turnkey Properties vs Lusaka West Development Corporation & Another**⁵ for the argument that the core of the law on injunctions is the preservation of the status quo pending the determination of the parties' rights. Counsel argued that there is no status quo that needs to be preserved on the plaintiff's part but there is a status quo to be preserved on the defendants' part. That the grant of an injunction will cause an injustice to UNIP and Zambia National Holdings Limited, and the order sought if granted will have the effect of determining this matter as the plaintiff will believe that it does not need to pay rentals. Counsel prayed for the dismissal of the plaintiff's application.

4.0 The Plaintiff's Affidavit in Reply

In reply, the plaintiff filed an affidavit wherein its Managing Director deposed that on inquiry, it was established that while the defendants claim their membership to UNIP as the basis for their claim to have a say in the affairs of Zambia National Holdings Limited, he is informed by the Chairman of Zambia National Holdings Limited that there is an order of injunction granted against some of the defendants herein, including the deponent of the affidavit in opposition, refraining them from interfering with the affairs of UNIP, a party led by Bishop Trevor Mwamba. An appeal was filed in the Court of Appeal challenging the said injunction but the Court of Appeal dismissed the appeal and upheld the grant of Injunction in favour of Bishop Trevor Mwamba led UNIP.

The said injunction has not been vacated to this day. The happenings in UNIP should not affect the plaintiff's lease agreement signed with Zambia National Holdings Limited which is an incorporated company capable of suing and be sued on its own.

The defendants did not come in the manner being claimed but instead invaded the Kenneth Kaunda House where they started spending nights at Premium Hotel housed at Kenneth Kaunda House, holding meetings and collecting money from the plaintiff's clients and tenants on the pretext that they are now the new officer bearers of UNIP and are entitled to be at Kenneth Kaunda House and the hotel any time. The plaintiff cannot pay rentals to the Defendants herein as rentals have always been paid to Zambia National Holdings Limited whose Chairman is Bishop Trevor Mwamba. If there were any

rental arrears, it is Zambia National Holdings Limited to claim the same. The plaintiff sued the defendants in their personal capacities as they are the individuals who were interfering and disrupting the plaintiff's business when they have no relationship with the Plaintiff. The plaintiff was never served with any letter and even assuming that the said letter was served on the plaintiff, the said letter would have no effect as the same would have been written in contravention of the Court Order of Injunction granted in the other matter.

5.0 The Hearing

The parties relied on their respective documents filed in support and opposing the application, which they restated.

6.0 The Decision of the Court

I am indebted to counsel for the arguments which I have carefully considered.

It is well established that an order of interim injunction is a discretionary remedy that the court affords to an applicant to prevent irreparable injury pending the determination of the main matter. An injunctive order is not awarded as a matter of right but is awarded judiciously having regard to all the facts and circumstances of each and every case. 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** 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 the facts presented I am convinced that there exists a serious issue to be determined at trial. The 1st to 9th defendants having conceded to going to Kenneth Kaunda House to allegedly demand payment of rentals, and having averred in the affidavit in opposition that they were in the process of evicting the plaintiff before they were served with this injunction, I am of the view that this is a proper case which warrants the grant of an injunction. Should the injunction not be granted, the 1st to 9th defendants may forcibly evict the plaintiff before this court has the opportunity to decide on whether the said defendants have authority to act on behalf of Zambia National Holding Limited. If not enjoined, I believe the plaintiff may evict the plaintiff and thereby cause it injury which

I do not believe can be atoned for by an award of damages. On the foregoing, the injunction order granted on 30th December, 2024 is hereby confirmed.

Costs are awarded to the plaintiff, to be taxed in default of agreement.

Leave to appeal is hereby granted.

Dated at Lusaka this ^{16th} day of ^{July} 2025

