

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

2025/HP/0098



BETWEEN:

ROYD MWENZEKO

(Suing as Chairperson of Learn to share Mining Cooperative Limited)

PLAINTIFF

AND

LEVY KATONGO NALUTUMBA

PETER MUTALE

DERRICK MWAPE

MRS. JUDY KALUNGA

THAMARIE KALABA

1ST DEFENDANT

2ND DEFENDANT

3RD DEFENDANT

4TH DEFENDANT

5TH DEFENDANT

Before the Honourable Mrs. Justice R. Chibbabbuka on the 10th day of February, 2025

For the Plaintiff: Messrs Kabwe Grace Legal Practitioners

RULING

Cases referred to:

1. *Shell & BP Zambia Limited Vs Conidaris And others (1957) Z.R. 174*
2. *American Cyanamid Company Vs Ethicon Limited (1975) AC 396*
3. *Novartis AG Vs Dexcel- Pharma Limited (2008) EWHC 1266*
4. *Benard 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.
The Rules of the Supreme Court of England (White Book) 1999 Edition.

Other works referred to:

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

1.0 Introduction

This Ruling pertains to the Plaintiff's ex parte application for an Interim Order of injunction, which was filed on 27th January, 2025, by summons made pursuant to Order 27 Rule 1 of the High Court Rules, in the High Court Act, Chapter 27 of the Laws of Zambia.

2.0 Plaintiffs Affidavit in Support

The plaintiff filed an affidavit on even date where he deposes that; on or about 16th January, 2025, the defendants herein did without authorisation from the Board of Directors of Learn to Share Mining Co-operative, cause to be issued a memorandum calling for an extraordinary meeting, without an agenda known by any of the Board of Directors. The defendants call for the extraordinary meeting contravened clauses 9 and 15 of the by laws of Learn To Share Mining Cooperative Limited which provide that:

"9. The Chairperson of the Board shall preside at the opening and closing of all meetings of the Learn To Share Mining Cooperative Limited".

"15. The Directors may, at the requisition of not less than five (5) members of the Board convene a special meeting of the Board. Such requisition, must state the objectives of the meeting and signed by the requisition and deposited."

The defendants were made alive to the contents in clauses 9 and 15 of the Learn to Share Mining Co-operative by laws, which guide on how meetings should be held and if there is any problem, the by laws have provided for the procedure which has not been followed by the defendants. The defendants' action of convening an un-sanctioned meeting without the consent of the Chairperson and/or with 5 Board members is a serious violation of the co-operative by laws. The plaintiff through his office did communicate to the defendants notifying them of the cancellation of the purported illegal meeting which was scheduled to be

held on the 21st January, 2025 and a further memorandum notifying all the members of the unveiling illegalities. The defendants did on the 21st January, 2025 without the consent of the Board of Directors and all the stakeholders of Learn To Share Mining Co-operative Limited, proceed to convene and hold an illegal meeting at Mpika in Muchinga Province.

The defendants have now issued a letter purporting to have suspended him in their illegal meeting. The defendants have no authority to convene a meeting and/or make any resolutions outside the required provisions of the Board of Directors as required by the by laws of Learn To Share Mining Co-operative Limited. Despite several reminders, the defendants have continued to purport and/or masquerade as executive members of the Learn To Share Mining Co-operating Limited.

As a result of the defendants' actions the plaintiff has suffered loss and damage which is beyond repair as over 700 employees have gone unpaid of their salaries. The defendants have harassed the plaintiff by their action, thereby causing loss and suffering to the plaintiff thereby violating the plaintiff's legal right to property, safety, peace, a health and working environment and causing irreparable damage to the co-operative reputation and employees.

2.1 The Plaintiff's Supporting Evidence

The application was brought pursuant to *Order 27 Rule 1* of the *High Court Rules*, in the *High Court Act Chapter 27* of the *Laws of Zambia* as read together with *Order 29 Rule 1* of the *Rules of the Supreme Court of England (White Book) 1999 Edition*.

Counsel argued that in terms of *Order 27 Rule 1* of the *High Court Rules*, in the *High Court Act Chapter 27* of the *Laws of Zambia*, and that *Order 29 Rule 1* of the *Rules of the Supreme Court*, the said *Rules* gives this Court the power to grant an order of injunction.

In relation to the reliefs, counsel made reference to the case of **Shell & BP Zambia Limited Vs Conidaris And others**¹, the Supreme Court cited trite approval in the of **American Cyanamid Company Vs Ethicon Limited**², where it was held:

“A Court will not generally grant interlocutory injunction unless the right to relief is clear and unless the injunction is necessary to protect the plaintiff from irreparable injury.”

Counsel submitted that the plaintiff has a clear right of relief as he is the duly appointed chairman of the Learn to Share Co-operative Limited which chairman is to hold office for 2 years and thereafter, elections are to be held. That the defendants holding a meeting on the 21st January, 2025 to which the plaintiff has since been issued with a letter purporting to have suspended him in their meeting, was illegal. This is because the defendants have no authority to convene a meeting and/or make any resolutions outside the required provisions of the Board of Directors as required by the by laws of Learn to Share Mining Cooperative Limited as per clause 15 of the Learn to Share Mining Cooperative by laws which guides that;

“The Directors may at the requisition of not less than five (5) members of the Board convene a special meeting of the Board. Such requisition, must state the objectives of the meeting and signed by the requisition and deposited”

Further despite several reminders, the defendants have continued to purport and/or masquerade as executive members of the Learn to Share Mining Cooperative Limited and yet not.

Reference was made to the case of **Shell & BP Zambia Limited Vs Conidaris & Others**, where the Supreme Court cited with approval the case of **American Cyanamid Company Vs Ethicon Limited**, as it held:

“A court will not generally grant an interlocutory injunction unless the injunction is necessary to protect the plaintiff from irreparable injury, mere inconvenience is not enough irreparable damage means injury which is substantial and can never be adequately remedied or atoned for by damages”

Based on the foregoing case counsel argued that if the defendants are not restrained by an order of an interim injunction, the plaintiff will suffer injury that may not be atoned for in damages as they would continue to be deprived of the quiet and peaceful administration of the cooperative. Additionally, the smooth payment of employees who are over 700 who if they sued the cooperative for their salaries, the loss would be irreparable by damages on the cooperative.

It was also submitted by counsel that the documents exhibited by the plaintiff are proof to support the granting of the interim injunction relief. Furthermore, the Affidavit in support of Ex-parte summons for an Order of Interim Injunction clearly demonstrates that the plaintiff will suffer irreparable injury in the event that this Order is not granted as there will be destabilization of the smooth operations of the cooperative during the still active 2 years term for the chairman and the other Board of Directors. That if the defendants are not restrained by a grant of an interlocutory injunction, the plaintiff will suffer irreparable injury that may not be atoned for in damages going by the rate at which the defendants are destabilizing the co-operative.

In that regard, counsel argued that the balance of convenience is in favour of granting the interlocutory relief that is sought to maintain the status quo. Reliance for this argument was placed on the case of **Novartis AG Vs Dexcel-Pharma Limited**³ where the court in paragraph 24 held as follows:

“If I am satisfied that there is a serious issue to be tried, I should proceed to determine where the balance of convenience sometimes called balance of injustice, lies. Where the balance of injustice appears

evenly balanced, it may be appropriate to take steps to preserve the status quo”.

3.0 The Hearing

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

4.0 The Decision of the Court

I have carefully considered the plaintiffs’ application for an 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. It is trite law that 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.

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 vs Ethicon Limited** 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. In *casu*, the plaintiffs allege that the defendants are masquerading as Executive Co-operative members of Learn to Share Mining Co-operative Limited. This allegation by the plaintiff raises a serious question, that can only be determined at trial. I therefore find that there is indeed a serious question to be tried.

Having found that there is a serious question to be tried, the next question is whether an award of damages can adequately compensate the plaintiff 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]

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 plaintiffs' concern is that should the defendants continue masquerading as members of the Learn to Share Mining Co-operative Limited they will disrupt the smooth operations of the Co-operative and destabilise the payment of salaries of about 700 employees. A careful perusal of the pleadings reveals however that, the plaintiff has claimed an award of general damages in his writ of summons. 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.”

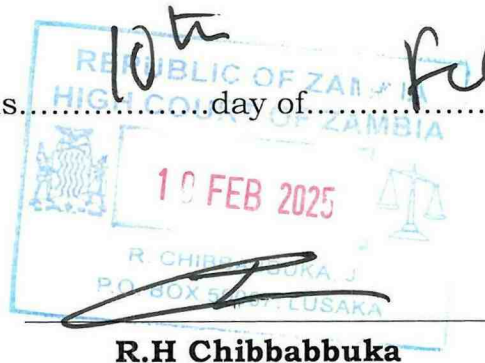
The question then is, what effect a claim of damages has on an application for an order of injunction? The Supreme Court addressed this question in the case of **Kekelwa Samuel Kongwa vs David Nkhata**⁵ when it directed that where in a statement of claim the plaintiff acknowledges that damages would 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. The plaintiff herein having acknowledged in his statement of

claim that general damages would suffice as compensation for the injury that he alleges the co-operative likely to suffer should the injunction not be granted, and having not established by evidence that the defendants are not in a position to pay the said claimed damages, he cannot be granted an injunctive remedy. I accordingly dismiss the injunction application.

Since the application was ex-parte to which the defendant was not obliged to respond at that stage, each party will bear their own costs.

Leave to appeal is granted.

Dated at Lusaka this 10th day of February 2025



R.H Chibbabbuka
HIGH COURT JUDGE