

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

2025/HP/0019

BETWEEN:

LUKE MWANZA
(T/A Horizon Academy)

MUBITA MUNGANDI
(T/A Horizon Academy)

AND

NYAMBE LISIMBA
(T/A Hope Trust Private School)



1ST PLAINTIFF

2ND PLAINTIFF

DEFENDANT

Before the Hon. Mrs. Justice R. Chibbabbuka on the 6th day of February, 2025.

For the Plaintiff: In Person

RULING

Cases referred to:

1. *Bernard Kotalika vs Dainess Kalunga SCZ/73/2013*
2. *American Cyanamid Company vs Ethicon Limited (1975) A.C 396*
3. *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

This ruling pertains to the plaintiff's ex-parte application for an interim order of injunction, which was filed on 10th January, 2025, by summons made pursuant to *Order 27* of the *High Court Rules, Chapter 27* of the *Laws of Zambia*.

2.0 The Plaintiffs' Affidavit in Support

The plaintiffs filed an affidavit of even date as the summons, wherein it is deposed that: sometime around January 2025, the defendant leased the plaintiffs his property for a period of 3 years from 5th January 2024 to 5th January, 2027. Prior to the foregoing, the defendant had been running his school on the said leased property. At the time of the lease, the defendant informed the plaintiffs that his school had 250 pupils, which was a condition precedent for the plaintiffs entering into the agreement with the defendant as they believed that the business was viable. The plaintiffs anticipated that with proper management of the school with that number of pupils, there would be no challenges with monthly rentals which were pegged at K8,000.00.

The plaintiffs later discovered that the number of pupils at the leased school was 175 and not 250 which made their business projection plan difficult. Further, that the defendant's wife started interfering with the running of the school by continually trespassing on the premises to conduct meetings with unknown people which actions caused challenges. When they complained to the defendant, he issued them with a notice to terminate the lease agreement. Should the parents of the pupils get to know of what is happening, it will affect the running of the school terribly. The plaintiffs are willing to liquidate the arrears. The plaintiffs seek an order injuncting the defendant from trespassing, committing a nuisance or disturbing the plaintiffs' quiet enjoyment of the school business until resolution of this matter.

2.1 The Plaintiffs' Skeleton Arguments

In support of the application, the plaintiff filed skeleton arguments wherein he argued that *Order 27* of the *High Court Rules* gives this court the power to grant an order of injunction to restrain the defendant from trespassing or evicting the plaintiffs' business from the leased property. The plaintiffs prayed that the order of injunction be granted herein so that the status quo is maintained until this court hears this matter conclusively.

3.0 The Defendant's Affidavit in Opposition

The defendant filed an affidavit in opposition on 20th January, 2025 wherein he deposed that he leased out a fully developed property to the plaintiffs while the plaintiffs did not bring anything for them to conduct business. That the lease clearly stated that if the plaintiffs breached the terms of the agreement, he had an option to terminate the lease. The number of pupils in the school was not a term of the lease and he had not failed to run his school but just opted to receive rentals because of his age. Although the parties agreed that the monthly rentals would be K8, 500.00, the plaintiffs have not paid rentals for 5 months plus the agreed interest which now stands at K49, 230.50 and counting.

The issue of the number of pupils has only arisen after termination of the lease. His wife never interfered with the running of the school but only started going to the school after termination of the lease. The plaintiffs were informed of the termination of the lease before the close of school last year and the school is currently being run by Hope Trust Private School given the failure by the plaintiffs. The plaintiffs are not ready to pay the agreed rentals but are proposing to reduce the rent amount. The children at the school are not affected in any way as Hope Trust Private School has continued with running the school.

4.0 The Hearing

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

5.0 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**¹ 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**² 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 defendant has breached the lease agreement entered into by the parties. This allegation by the plaintiffs 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 plaintiffs should the injunction not be granted and whether the defendant is 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 pupils’ parents know of the termination, it will affect the running of the school. The plaintiffs have not specifically stated how the running of the school will be affected especially in light of the fact that these are pupils the plaintiffs found at the school when they took over and not pupils that they brought to the school or that started school after the plaintiffs took over. Further, a careful perusal of the pleadings reveals that the plaintiffs have claimed an award of general damages in their 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**³ 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 plaintiffs herein having acknowledged in their statement of claim that general damages would suffice as compensation for the injury that they allege they are likely to suffer should the injunction not be granted, and having not established that the defendant is not in a position to pay the said claimed damages, they 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..... day of.....2025

for February



R.H Chibbabbuka
HIGH COURT JUDGE