

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

2025/HP/0124

BETWEEN:

MABVUTO SHATUYAMBE

PLAINTIFF

AND

DIDIE KANGWA

1ST DEFENDANT

RABUTI NSWANA (Sued in her capacity Headwoman Moomba
of Moomba Village)

2ND DEFENDANT



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

For the Plaintiff: Messrs Lusenga Mulongoti Advocates

RULING

Cases referred to:

1. *Shell & BP Zambia Limited Vs Conidaris & others* (1957) Z.R. 174
2. *Cyanamid Company Vs Ethicon Limited* (1975) AC 396²
3. *Novartis AG Vs. Dexcel Pharma Limited* (2008) EWHC 1265³
4. *Harton Ndowe V National Education Council of Zambia Limited* (1980) Z..R 185
5. *Bernard Kutalika vs Dainess Kalunga* SCZ/73/2013
6. *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 injunction, which was filed on the 30th January, 2025. The application was made pursuant to *Order 27* of the *High Court Rules*, in the *High Court Act, Chapter 27* of the *Laws of Zambia* as read together with *Order 29 Rules 1* of the *Rules of the Supreme Court of England, 1999 Edition*.

2.0 Plaintiffs Affidavit in Support

The Plaintiff's application is supported by an affidavit deposed to by the Plaintiff who avers that he met the 1st Defendant herein at the Lusaka Subordinate Court in the year 2012. At the time the 1st defendant used to work at the Subordinate Court. After he explained that there was a person by the name of Abie Chimbalanga in Kafue who was refusing to vacate the house he had bought from him, the 1st Defendant herein assured him that he was going to help him evict the said Abie Chimbalanga from the said House. The 1st defendant asked for the sum of K18,000.00 in order for him to do the job and he even signed for it.

The 1st defendant failed to do the work as promised but instead, he u-turned and reported to the police that the plaintiff had obtained the sum of K83,000.00 from the 1st defendant by false pretences and that he was going to buy him a piece of land in 15 miles. The plaintiff was charged with an offence of obtaining money by false pretences. When the matter was taken to Court, he was acquitted on a no case to answer stage, on the basis that there was no evidence to substantiate the 1st defendant's claims that the plaintiff was given the sum of K83,000.00.

The 1st defendant has been frequenting the plaintiff's place at 15 miles, and has been threatening to harm the plaintiff. Further, the 1st defendant has even mounted beacons on a piece of land for which he has paid no money and there is no evidence that the Plaintiff ever received any money from the 1st defendant as consideration for the subject piece of land. The subject piece of land was granted to the Plaintiff and his family in October in the year 1994 by Headman

Moomba as evidenced by a letter from Headman Moomba dated the 18th February, 2008. The 1st Defendant after mounting beacons on the subject piece of land, claimed ownership of the said piece of land, and proceeded to report the plaintiff, that he has trespassed on the piece of land in question and the plaintiff was charged with criminal trespass. The matter is still at the Subordinate Court and is yet to be concluded.

After the plaintiff herein was placed in custody over the allegations of obtaining money by false pretences, the said 1st defendant went to the mother of the plaintiff and made her sign a document indicating that the mother of the plaintiff has sold him land at the price of K48,000.00. The 1st defendant made her sign the document on the pretext that once that was done, he was going to withdraw the criminal charges against the plaintiff at the Subordinate court. The illiterate mother of the plaintiff had no option but to sign. It is not known to which piece of land the said agreement dated the 23rd of May, 2021 relates, because the mother of the plaintiff and the plaintiff himself have their own pieces of land at Nakanda of Moomba Village.

Earlier, on the 3rd September, 2018, there was another purported sale of land agreement, which stated that the Plaintiff and his family had given a piece of land to the 1st Defendant as a settlement of the sum of K48,000.00, which the 1st defendant alleged, he was being owed by the plaintiff. The said agreement was not signed on their behalf. Equally, the purported sale of land agreement did not specify the piece of land to which it relates. At the height of the disputes on the ownership of the land in question, the 1st Defendant lodged a complaint before a Traditional Court at Mungule under Chieftainess Mungule. The 1st defendant decided to stay away from the court proceedings, as a result the matter was thrown out. He also went on to sue the 1st defendant at Matero Local Court. There was an inordinate delay in hearing the matter, as a consequence at his own request, the matter was transferred to Lusaka Boma Local Court. The Local Magistrate simply advised the parties to settle the matter

ex-curia and did not render any written judgment. By reason thereof, he was unable to appeal since there was no written Judgment.

Following what had transpired, as he had sued the 1st Defendant at Lusaka Subordinate court in respect of the issue of ownership of the land in dispute, and while this civil matter was still active at the Subordinate Court, the 1st defendant continued frequenting his piece of land and he even slashed all the maize plants which the plaintiff had planted. As a consequence of what transpired, through his lawyers he filed contempt of court proceedings against the 1st defendant. The Honourable Magistrate did not rule on the application for contempt of court, and instead decided to dismiss the main matter on the basis that there was no evidence that the matter was ever taken to the traditional court.

The 1st defendant has continued to trespass on the subject piece of land, and has even gone to the extent of erecting a small house, which is occupied by teenage boys. This is notwithstanding that there is an active criminal matter before the subordinate court where he is facing a charge of criminal trespass on a piece of land which he has been occupying since 1994. He has never transferred ownership of the subject piece of land to any other person. On the false representations that were given to the 2nd defendant by the 1st defendant, the 2nd defendant proceeded to remove his name from the village registry and replaced the same with that of the 1st defendant, when the 1st defendant does not own any piece of land in Nakanda of Moomba village. The illegal acts of the 2nd defendant are as evidenced by a extract from the village registry and a letter authored by the 2nd defendant in her capacity as Headwoman Moomba dated the 6th of December, 2022.

2.1 The Plaintiff's skeleton arguments

In support of the application the plaintiff filed skeleton arguments. Reference was made to Order 27 Rule 1 of the *High Court Rules, 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. That these provisions vest this court with jurisdiction to grant an injunction.

Counsel argued that in relation to the relief, in the case of **Shell & BP Zambia Limited Vs Conidaris & others**¹, the Supreme Court cited with 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.”

It was counsel’s submission that the plaintiff has a clear right of relief as shown in the affidavit in support hereof. Further that the plaintiff is entitled to quiet possession of his piece of land. For this argument reliance was placed on the case of **Shell & BP Zambia Limited Vs Conidaris & Others**.

It was counsel’s argument 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 he would continue to be deprived of the quiet enjoyment of his land and the defendants have no means to pay damages. That, as deposed in the affidavit in support, the 1st defendant has put up a structure on the plaintiff’s piece of land. If the 1st defendant is not restrained by way of an injunction, the plaintiff will continue to be deprived of his right to develop his land as he wishes. Reliance for this argument was placed on the cases of **Shell & BP Zambia Limited Vs Conidaris & Others and American Cyanamid Company Vs Ethican Limited**.

Counsel further argued that the balance of convenience is in favour of granting the interlocutory relief that is sought to maintain the status quo. To buttress this argument reliance was placed on the case of **Novartis AG Vs. Dexcel Pharma Limited**³

Additionally, counsel contended that there is need to maintain the status quo. For this argument the Court was referred to the case of **Harton Ndowe Vs National Education Council of Zambia Limited**⁴, where it held:

“This is an application for an Interlocutory Injunction, the object of which is to keep in status quo, so that if at the hearing, the plaintiff 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 that judgment ineffectual.”

By way of concluding their arguments counsel prayed that this Honourable Court grants the plaintiff, an order of interim injunction, pending the hearing and determination of the main matter herein.

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**⁵ 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 defendant is trespassing on and holding himself to be the owner of the plaintiff's land. 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 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 defendant not be stopped from developing on the plaintiff's land he will suffer irreparable damage. A careful perusal of the pleadings, however reveals that the plaintiff has claimed an award of general damages in their writ of summons. In the **American Cyanamid** case, Lord Diplock stated that:

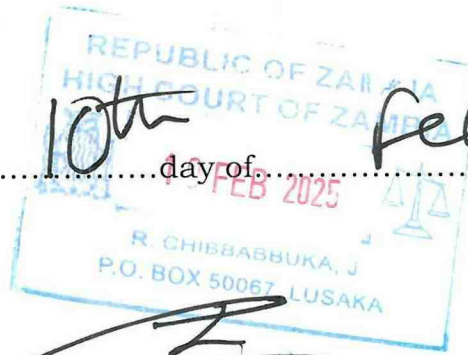
"If damages in the measure recoverable at common law would be an adequate remedy and the defendant would be in a financial position to pay them, then no interim injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage."

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**⁶ 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 he is likely to suffer should the injunction not be granted, and having not established by way of evidence that the defendant is 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..... day of 2025



R.H Chibbabbuka
HIGH COURT JUDGE