

IN THE HIGH COURT FOR ZAMBIA

2025/HP/0469

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)



**BETWEEN:**

**CHILOBE COMMUNITY DEVELOPMENT PROJECT LIMITED** PLAINTIFF

**AND**

**MADIBBA RESOURCES MULTIPURPOSES COOPERATIVE SOCIETY** 1<sup>ST</sup> DEFENDANT

**KACHIBA- BIYO MULTIPURPOSE COOPERATIVE SOCIETY** 2<sup>ND</sup> DEFENDANT

**TWEENDE CHILOBE MULTIPURPOSE COOPERATIVE SOCIETY LIMITED** 3<sup>RD</sup> DEFENDANT

**TUSUWA MULTIPURPOSE COOPERATIVE SOCIETY LIMITED** 4<sup>TH</sup> DEFENDANT

**Before the Honourable Mrs. Justice R. Chibbabbuka on the 19<sup>th</sup> day of May, 2025**

For the Plaintiff: Messrs Likando Kalaluka & Co

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## **RULING**

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### **Cases referred to:**

1. *American Cyanamid v Ethicon Limited* (1975) 1ALL ER 504
2. *R.R. Sambo and others v Paikani Mwanza* (SCZ Judgment No. 16 of 2000)
3. *Powerflex (Z) Limited V Efficient Freighters (Z) Limited* (2012) ZMHC 7
4. *Nottingham Building Society v Eurodynamics System* (1993) F.S.R 468
5. *Shell and BP Zambia v Conidaris & other* 1975 ZR 174
6. *Bernard Kutalika Vs Dainess Kalunga* SCZ/73/2013
7. *Kekelwa Samuel Kongwa Vs David Nkhata* Appeal No. 102 of 2013

**Legislation referred to:**

*The High Court Rules, Chapter 27 of the Laws of Zambia*

*The Rules of the Supreme Court of England 1999 Edition (White Book).*

**Other works referred to:**

*Atkin's Court Forms, 2<sup>nd</sup> Edition, Volume 22 (1), 1996 issue*

**1.0 Introduction**

This ruling pertains to the plaintiff's ex-parte application for an interim injunction, which was filed on the 3<sup>rd</sup> April, 2025, by way summons made pursuant to *Order 27 Rule 1* of the *High Court Rules, Chapter 27 of the Laws of Zambia* and *Order 29 Rule 1* of the *Rules of the Supreme Court of England 1999 Edition (White Book)*.

**2.0 Plaintiff Affidavit in Support**

The plaintiff filed an affidavit on even date deposed to by Pablo Durantez Irezabal a Managing Director of the plaintiff company who avers as follows:

On the 13<sup>th</sup> December, 2021 the plaintiff applied for a large-scale exploration licence. Upon lodging the said application, the plaintiff duly paid the relevant application fees in the sum of K3,000.00 and the plaintiff was issued with the large-scale exploration licence No. 30831-HQ-LEL with respect to the following minerals- Manganese, copper, cobalt, tungsten, iron ore, feldspar, tantalum, rare earth elements, tin and gold.

On the 2<sup>nd</sup> August, 2024, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants without seeking the consent of the plaintiff, fraudulently applied for and were on 14<sup>th</sup> August, 2024, granted Artisanal Mining Rights 38325-HQ-AMR, 38322-HQ-AMR, 38317-HQ-

AMR, 38324-HQ-AMR respectively, expiring on 13<sup>th</sup> August, 2026, in the area covered by the plaintiff's said large scale exploration no. 30831-HQ-LEL.

The plaintiff's said large scale exploration No. 30831-HQ-LEL disappeared in unexplained circumstances from the Mining Cadastre portal and was subsequently replaced with the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants' Artisanal mining rights.

## **2.1 List of authorities and skeleton Arguments in Support of Summons**

In support of this application, the plaintiff filed skeleton arguments wherein counsel made reference 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 1999 Edition* to show that this court has jurisdiction to entertain an application for an interim injunction pending the determination of the main matter.

Reference was made to the case of **American Cyanamid v Ethicon Limited**<sup>1</sup>, where the court gave guidelines to follow when granting an interlocutory injunction, which are laid down as follows:

1. Is there a serious question to be tried?

If the answer is yes;

2. Would damages be an adequate remedy for the injured party if the injunction is or is not granted?
3. If not where does the balance of convenience lie?

Counsel submitted that there is a serious question to be tried for the following reasons:

The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants have to explain how the plaintiff's licence somehow disappeared from the mining Cadestre portal and was replaced by the defendants Artisanal Mining Rights, yet the defendants never sought for consent from the plaintiff contrary to *section 16(1) of the Mines and Mineral Development Act No. 11 of 2025*, which reads:

*“An applicant for a mining right over an area subject to another mining right shall apply for consent from the holder of the mining right, which consent shall not be unreasonably withheld.”*

It was counsel's argument that in *casu* the defendants never sought the consent of the plaintiff yet the plaintiff had a prior large scale exploration licence No. 30831-HQ-LEL. That further, upon the grant of the defendants' Artisanal Mining Rights, the plaintiff's large scale exploration Licence No. 30831-HQ-LEL disappeared. Counsel submitted further that the foregoing events which culminated in the disappearance of the plaintiff's large scale exploration licence No. 30831-HQ-LEL and only to be replaced by the defendant's Artisanal Mining rights, do not only border on fraud but are actually fraudulent. For this argument reference was made to the case of **R.R. Sambo and others v Paikani Mwanza<sup>2</sup>**, where it was held:

*“We agree with the learned trial Judge that all these were bordering on fraud and in fact, they were fraudulent. We agree, therefore, with the finding of the learned trial Judge that the title deeds were not genuinely obtained and that the actions were in fact fraudulent.”*

Counsel was of the firm view that there is there a serious question to be tried herein as to whether there was fraud in the manner and circumstances that the defendants were granted Artisanal Mining Rights, over an area where the plaintiff has a large-scale exploration licence, without the consent of the plaintiff. Further that there is also need to investigate the disappearance of the plaintiff's licence.

On the question of whether damages would suffice, counsel submitted that the mining area under the plaintiff's large-scale exploration licence, is in danger of being wasted, damaged or alienated by the mining activities being undertaken by the defendants using heavy machinery. Therefore, this is a proper case for an injunction being granted as once the minerals on the land are exhaustively exploited by the defendants, damages would not suffice to compensate the plaintiff.

Counsel argued further, that the balance of convenience favours the plaintiff as it has demonstrated that the plaintiff was first granted the mining right before the defendants were, in circumstances that do not only border on fraud, but are actually fraudulent because no consent was ever sought nor granted by the plaintiff. This is more so that the plaintiff's large scale exploration licence disappeared from the Mining Cadastre upon the grant of the said illegal Artisanal Mining Rights to the defendants.

It was counsel's submission that in determining whether this court can grant an injunction, it has to weigh the risk of injustice that either party may incur if the injunction was granted. To fortify this argument reference was made to the case of **Powerflex (Z) Limited V Efficient Freighters (Z) Limited**<sup>3</sup> where the court referred to the case of **Nottingham Building Society v Eurodynamics System**<sup>4</sup> which held as follows:

*"The overriding consideration was: first which course is likely to involve the least risk of injustice if it turns out to be "wrong in the sense of granting an interlocutory injunction to a party who falls to establish his right at trial (or would fail if there was a trial) or alternatively, in failing to grant an injunction to a party who succeeds (or would succeed) at trial."*

Counsel submitted that not granting the injunction involved the greater risk as the mining area together with the minerals thereon, were danger of being wasted,

damaged or alienated by continuous mining activities by the defendants, should the court later on find for the plaintiff.

This court was implored to consider the balance of convenience being in favour of the defendant herein for this argument, reference was made to the case of **Shell and BP Zambia v Conidaris & other**<sup>5</sup> where the Supreme Court held as follows:

*“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 plaintiff from irreparable injury, mere inconvenience is not enough. Irreparable injury means. “Injury which is substantial and can never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired.”*

*Where any doubt exists as to the plaintiff’s right or if the violation of an admitted right is denied the court takes into consideration the balance of convenience to the parties. The burden of showing the greater inconvenience is on the plaintiff.*

*The right of the parties in this case being in dispute, and the potential loss to the defendant being far greater than the inconvenience the plaintiff would suffer if left to rely on its remedy in damages, this was not a proper case for the court of an interlocutor injunction.”*

Counsel submitted that the balance of convenience favours the plaintiff herein because firstly, if the injunction was not granted, there was a real chance that the mining area and the minerals thereon will be wasted, damaged or alienated. That as such there was therefore need to injunct the mining activities until final determination of this matter.

On the foregoing arguments counsel prayed that this court grants the plaintiff the injunction against the defendants to stop all mining activities on the area in dispute until final determination of the matter. Counsel also prayed for costs.

### **3.0 The hearing**

Pursuant to *Order 30 Rule 6A of the High Court (Amendment) Rules, No. 58 of 2020* the hearing of this application was dispensed with.

### **4.0 The decision of the Court**

I have carefully considered the arguments advanced by the plaintiff herein. A prohibitory injunction, is a judicial order that requires a party to refrain from doing a specific act, pending the determination of the parties' rights in the main cause of action. An order of injunction is discretionary and not awarded as of right as was held in the case of **Bernard Kutalika Vs Dainess Kalunga**<sup>6</sup> where it was stated that the court's discretionary remedy to grant an injunction must be exercised judiciously, having regard to all the facts and circumstances of each and every case.

The case of **American Cynamid Company Vs Ethicon Limited** outlines the principles and tests to be applied by a Court when faced with an application to grant an injunction or not. The said can be surmised as that; the Court should address the question as to 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 the case before this Court, the issue of how the defendants were each awarded artisanal mining rights over the area covered by the plaintiffs' large scale exploration licence No. 30831-HQ-LEL without the plaintiffs' consent and whose large-scale exploration simultaneously disappeared from the cadastre system at

the Ministry of Mines is a serious question that needs to be tried and I find accordingly.

However, in relation to whether an award of damages would be adequate to compensate the plaintiff should the plaintiff not be granted an injunction, the authors of **Atkin's Court Forms, 2<sup>nd</sup> Edition, Volume 22 (1)**, state at page 59 that:

*“An interlocutory injunction 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 finally be 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.”*

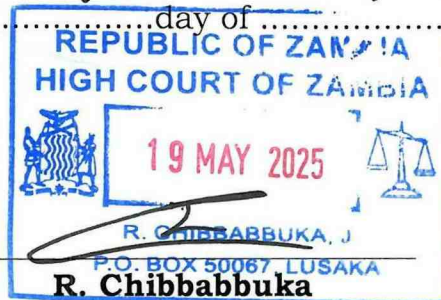
From the above cited text, it is clear that an injunction will be granted where it is shown to the Court that an award of damages will not effectively remedy the wrong occasioned to the claimant. In this case a perusal of the plaintiffs' claims reveals that the plaintiff is claiming damages for loss of business and loss of profit occasioned by the said fraudulent and illegal disappearance of the plaintiff's Large-Scale Exploration licence No. 30831-HQ-LEL. The Supreme Court in the case of **Kekelwa Samuel Kongwa Vs David Nkhata**<sup>7</sup> held that where in a statement of claim the plaintiff acknowledges that damages would adequately compensate him for any loss, then an injunction should not be granted. The fact that the plaintiff in their skeleton arguments has argued that damages will not suffice to repair the irreparable damage contradicts the said claim as outlined above. Additionally, the Supreme Court went on to hold in the **Kekelwa Samuel Kongwa** case that the burden was on the plaintiff to show that the defendant had no financial capacity to pay the damages. Similarly in the **American Cynamid** 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.”*

With the foregoing authorities in mind and in assessing the plaintiff’s application, it is clear that an injunction cannot be granted in this case as the plaintiff has acknowledged that damages will suffice for whatever loss it has or will suffer. This is because it has acknowledged the same by making a claim for damages as against the defendants in the writ of summons and statement of claim. Further, the plaintiff has not shown this Court that the defendants are not in a financial position to pay the said damages. Accordingly, the balance of convenience does not tilt in favour of the plaintiff. As such the application for an injunction is hereby dismissed. The plaintiff will bear its own costs for this application.

Leave to appeal is granted.

Delivered at Lusaka this ..... day of ..... 2025



**R. Chibbabbuka**  
**HIGH COURT JUDGE**