

Legislation referred to:

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

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

The Rent Act, Chapter 206 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 applicant's ex-parte application for an interim injunction, which was filed on 30th June, 2025, by summons made pursuant to *Order 27 of the High Court Rules, 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 Applicant's Affidavit in Support

In support of the application, the applicant filed an affidavit in support wherein she deposed that the respondent is her landlord and owner of the premises known as House 1 Lot 3084M Subj Foxdale in the Lusaka District and province of the republic of Zambia. She has been a tenant of the said premises for nearly 2 years during which the respondent and her have enjoyed a peaceful and cordial relationship. In or around April, 2025, the respondent issued and served a one month notice to vacate the premises on the basis that she wished to sell the house. That she requested for more time from the respondent as the period given therein was inadequate for her to find suitable accommodation as she works from home, and she needs to find accommodation within the same area as her child attends a nearby school.

The respondent insisted that she leave the premises within the given time frame and further started bringing people she referred to as prospective buyers to view the house at awkward hours such around 21:00 to 22:00 hours. This caused her family great inconvenience and emotional distress as the people the respondent would bring to view the premises are strangers to them. On or about 18 June, she was served with a call-out to attend a meeting with the respondent and some

alleged officer of a place called Landlord and Tenant Victim behind Mtendere police post where she was threatened and coerced into signing a document termed as a resolution of the differences between the respondent and herself. She and her family will be put to great suffering as they will be homeless if the respondent removes them from the premises.

2.1 The Applicant's Skeleton Arguments

In support of the application, the applicant filed skeleton arguments wherein she referred this court to *Order 27 rule 1* of the *High Court Rules*, and *Order 29 rule 1 (2)* of the *Rules of the Supreme Court of England* as the law pursuant to which her application has been made. She argued that the cited laws give this court the jurisdiction to grant her an order of interim injunction. That if not granted the injunction, she will suffer grave damage.

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 arguments advanced by the applicant herein. The simplest definition of an injunction is that it is a judicial order whereby the court orders a party to refrain from doing specified acts pending the determination of the parties' rights. 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 remedy 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 respondent is in a position to pay; and lastly where the balance of convenience lies. On the facts of this case, there is a serious question to be tried as to the rights of the parties.

Having found that there is a serious question to be tried, the next question is whether an award of damages can adequately compensate the applicant should the injunction not be granted and whether the respondent 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 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.”

A careful perusal of the pleadings reveals that the applicant has claimed an award of general damages in his writ of summons. 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 applicant acknowledges that damages would adequately compensate him/her for any loss of the use of the property in question, the burden was on the applicant to establish that the respondent has no financial capacity to pay the damages. The applicant in this matter having acknowledged in her statement of claim that damages for trespass, emotional distress and inconvenience would suffice as compensation for the loss of use of the house in question, and having not established that the respondent is not in a position to pay the said claim damages, she cannot be granted an injunctive remedy.

Further, it is trite that injunctions are appropriate when a threatened action would cause imminent and irreparable harm that cannot be atoned for in damages. The applicant argues that if the order of injunction is not granted, the respondent may evict her from the property in question before the conclusion of this action. The question is whether there is need for the applicant to have such apprehension. *Section 13* of the *Rent Act* provides an answer to the foregoing question. The *section* enacts in part that:

“No order for the recovery of possession of any premises or for the ejection of a tenant therefrom shall be made unless...”

Section 13 of the *Rent Act* refers to landlords obtaining orders for possession to eject tenants. It follows therefore that there is no threatened action that would cause imminent and irreparable harm to the applicant herein as the respondent cannot eject her from the premises in the absence of a court order.

It is not necessary to grant an order of injunction at this stage and hence the application is accordingly dismissed.

Costs are in the cause.

Leave to appeal is granted.

Dated at Lusaka this..... day of.....2025



R.H Chibbabbuka
HIGH COURT JUDGE