

**IN THE COURT OF APPEAL OF ZAMBIA
AT THE COURT OF APPEAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

CAZ/08/568/2025

BETWEEN:

CHIEFTAINNESS LESA

APPLICANT

AND

MPONGWE FARMS LIMITED

1ST RESPONDENT

JOHN WILLIAM CLAYTON

2ND RESPONDENT

RICHARD GATAWA

3RD RESPONDENT

**Before the Honourable Mrs. Justice A. M. Banda-Bobo in Chambers on
5th February, 2026.**

For the Applicant: N/A

For the Respondent: **Mr. M. Lwanga of Messrs A. M. W and Co. Legal
Practitioners**

RULING

Cases referred to:

1. American Cynamid and Company v. Ethicon Company (1975)/ AIIER 504
2. Hillary Bernard Mukosa (SCZ J No. 7 of 1993)
3. Harton Ndove v National Publishing Company Zambia Limited (1980) ZR 184
4. Shell and BP Zambia Limited v. Conidaris and Others (1975) ZR 174 (S.C)
5. Afritec Asset Management Company Limited and Another v The Gynae and Antenatal Clinic Limited and Another (Appeal No. 64/2015/SCZ/8/66/2015
6. Communications Authority v. Vodacom Zambia Limited (SCZ Judgment No. 21 of 2009)
7. Turnkey Properties v. Lusaka West Development Company Limited and Others (1984) ZR 85, (SC)

Legislation referred to:

- The Court of Appeal Act (CAA) No. 7 of 2016

- The Court of Appeal Rules (CARs)
- The Supreme Court (RSC) 1999 Edition of the White Book

Other Works referred to:

- J. A. McGhee, in Snells Equity, 31st Edition

1.0 INTRODUCTION

1.1 This is a Ruling on a Renewed application for an Order of Interim Injunction by the Applicant, filed on 13th November, 2025. The application is anchored on Section 9 of the Court of Appeal Act (CAA) No. 7 and Order X rule 2 and Order VII rules 1 and 2 of the Court of Appeal Rules (CARs) as read together with Order 29 rule 1 of the Rules of the Supreme Court (RSC) 1999 Edition of the White Book. The application was accompanied by an affidavit and skeleton arguments.

2.0 BACKGROUND

2.1 The Applicant had initially applied before the lower Court for an order of Interim Injunction to restrain the Respondents, by themselves or their servants from interfering with the Applicant's functions and authority as Chieftainess Lesa and evicting the Appellant's subjects from Chieftainess Lesa's area pending the hearing and determination of the substantive

matter before Court. This was on the basis that the Applicant would suffer irreparable injury, that the right to relief was clear, and to maintain law and order on the traditional land of the Applicant as a *status quo*.

3.0 **DECISION OF THE LOWER COURT**

3.1 In his Ruling rendered on 30th October, 2025, the learned Judge in the lower Court determined that there was a serious question that needed to be determined through a full trial. On the question of whether the application before him was one in which he could exercise his discretion and grant an injunction in favour of the Applicant, he determined, on the facts of the case, the learned Judge was of the view that where a plaintiff claims damages for injury, courts assume that damages will suffice to atone for whatever injury the plaintiff has suffered. It was his view that despite finding that a serious question had been raised, and if the same were to be resolved in the Plaintiff's favour after a full trial, the Plaintiff will be awarded damages which will suffice to atone for the trespass/injury.

3.2 He adjudged that that was not a proper case in which he could grant the Order of Interim Injunction. He thus discharged the Ex-parte Order of Interim Injunction he had granted earlier.

4.0 **THIS APPLICATION**

4.1 It is that Ruling that displeased the Applicant, and which prompted the renewal of the same application before this Court.

5.0 **AFFIDAVIT IN SUPPORT**

5.1 As stated in paragraph 1, above, the application was accompanied by an affidavit in support, sworn by one Margaret Musonda (Chieftainess Lesa) the Applicant. The same affidavit spanned eighteen (18) paragraphs. For purposes of this Ruling, I will only reproduce those paragraphs relevant to this application.

5.2 She averred that she held the office of the Applicant, of the Lima Royal Establishment of Mpongwe District, and was recognised as such by the Government of the Republic of Zambia. Constitutionally and under the relevant laws of Zambia. She also alluded to the status of the 1st Respondent, as an artificial person, as well as the status of the two other Respondents.

- 5.3 It was her averment that the 1st Respondent is a holder of a Certificate of Title in respect of Farm 4809 in Mpongwe, which property is located in Chief Mwinuna of Mpongwe. That the Respondents have trespassed on the traditional land belonging to the Applicant, and claimed ownership thereof, and in the process victimised the Applicant's subjects by evicting them and destroying their crops. She exhibited "MM 3 - 4" being a Ministry of Lands and Natural Resources, Ndola Survey Regional Office land availability Report for unnumbered parcel of land located in her Chiefdom in respect of 10,000 hectares, including a map in respect thereof.
- 5.4 That the Respondents issued verbal eviction notices to the Applicant's subjects. That a letter of demand to the Respondents to desist did not yield any results, which prompted the Applicant to issue process in the Kitwe High Court.
- 5.5 It was deposed that the Kitwe High Court refused to confirm the Ex-parte Order of Injunction granted earlier, and discharged it.
- 5.6 It was her averment that as a result of the discharge of the Ex-parte Order, the parties have started fighting and assaulting each other over the 10,000 hectares situated in her Chiefdom.

5.7 It was her deposition that the reliefs of the Orders of Injunction are the main reliefs and damages are incidental to the claims of trespass. It was her belief that this is an appropriate case in which to grant the order of interim injunction pending the disposal of the main matter in the lower Court, because the Applicant's subjects will suffer irreparable damage if the Respondents proceed to evict them from the Chiefdom.

6.0 **AFFIDAVIT IN OPPOSITION**

6.1 The application was opposed by way of an affidavit in opposition sworn by the 2nd Respondent herein, who is also a Director in the 1st Respondent, and swearing in that capacity. It was his averment that property No. 4809 (the property) is held on a 99-year lease from 1st October, 1985 by the 1st Respondent; as per exhibition "JWKC 1" being a copy of the Certificate of Title (CoT), and its dimensions and locations are as per the diagram issued after a survey thereof. That the property measures 66,102.0429 hectares as appear on diagram 14/1989.

6.2 The affiant denied trespassing on the Applicant's alleged traditional land, contending that they have been exercising the rights vested in the 1st Respondent by virtue of the CoT in their

possession, and that no crops were destroyed, nor had anyone been evicted. That rather, it is the Applicant who has interfered with the 1st Respondent's use and enjoyment of the property, by allowing her subjects to cut trees on the property and cultivate crops. That the Applicant had even given farming permits to her subjects, within the Respondent's property.

6.3 That infact, the land demarcation map prepared by the Ministry of Lands, Ndola Office confirmed that 10,000 hectares of land lies wholly within the legally surveyed boundaries of the property.

7.0 **ARGUMENTS**

7.1 Each party filed skeleton arguments in support of their respective positions. In support of the renewed application, the applicant filed skeleton arguments on the principles for the grant of an injunction arguing that this application meets all the principles as enunciated in various authorities.

7.2 The Respondents on the other hand, vigorously contend that the Applicant's application does not meet the tenets for the grant of an interlocutory injunction, stating that there is no serious question fit for trial, has not shown that damages would

be an inadequate remedy, and that the balance of convenience favours the Respondents in the circumstances of this matter. I do not intend to reproduce the skeleton arguments by each party, but suffice to state that I will refer to them as and when need arises. I have also considered the affidavit and skeleton arguments in Reply.

8.0 **HEARING**

- 8.1 When the matter came up for hearing, only counsel for the Respondent was in attendance. We adjourned this matter earlier to the date of hearing in the presence of counsel for the Applicant, but the Court did not receive any communication stating why counsel was absent. The matter was thus heard only in the presence of counsel for the Respondent. I must state that staying away without a proper explanation is disrespectful to Court and such conduct is highly deprecated.
- 8.2 In support of his position, counsel, Mr. Lwanga relied on the affidavit in opposition and skeleton arguments; reiterating that the Applicant had failed to satisfy the test in the case of **American Cynamid and Company v. Ethicon Company**¹.

Further, that the property being claimed falls squarely within the property over which the Respondents possess a CoT.

8.3 That thus the Applicant is not entitled to an order of interim injunction.

9.0 **ANALYSIS AND DECISION**

9.1 I have carefully considered the application, the affidavits for and against, the skeleton arguments, oral submissions, and the impugned Ruling.

9.2 The issue for resolution is whether this is a matter in which I should exercise my discretion and grant the Applicant, the interim order of Injunction.

9.3 Whenever an injunctive relief is sought, the Court is faced with the challenge of deciding whether the relief sought should be granted without the Applicant proving a right to the substantive remedies he seeks in the substantive matter. J. A. McGhee, in Snells Equity, 31st Edition, at page 405, paragraphs 16 – 20 writes eloquently on this issue.

9.4 Further, the case of **American Cynamid v. Ethicon Limited**¹, cited by each party herein, Lord Diplock stated that:

“When an application for an order of Interlocutory injunction to restrain a defendant from doing acts alleged to be in violation of the plaintiff’s legal right is made on contested facts, the decision whether or not to grant an interlocutory injunction has to be taken at a time when (*Ex-hypothesis*) the evidence of the right or the violation of it is uncertain and will remain uncertain until final judgment is given in the action. The question to be determined at this stage thereof is only whether or not on the material currently available to the court discloses that the plaintiff has any real prospect of succeeding in its claim for a permanent injunction at the conclusion of trial. If, and only if, the answer to this question is in the affirmative is the injunction tentatively sustainable.”

9.5 It is trite that the grant of an order of interim injunction is a discretionary remedy. It is usually granted in most instances to preserve the *status quo* until the rights of the parties are determined in the action. In exercising that discretion, the courts generally takes into consideration that the right to relief sought by the Applicant is clear and the injunction is necessary to protect the Applicant from irreparable injury, which injury can not be atoned for by damages.

9.6 As regards the question of whether there is a serious question to be tried, the Supreme Court in the case of **Hillary Bernard Mukosa**² held that:

“An injunction will be granted only to a plaintiff who establishes that he has a good and arguable claim to the right he seeks to protect.”

9.7 Further guidance can be gleaned from the case of **Harton Ndove v National Publishing Company Zambia Limited**³ where the Court was of the view that in an application for an interlocutory injunction, though the court is not called upon to decide finally on the rights of the parties, it is necessary that the court is satisfied that there is a serious question to be tried at the hearing and that on the facts before it, there is a probability that the applicant is entitled to the relief.

9.8 Further, an injunction will only be granted on set principles, as espoused in the **American Cynamid Company v Ethicon Company Limited**¹; vis

- (i) Where there is a serious question to be tried;
- (ii) Whether damages would be an adequate remedy;
- (iii) Where the balance of convenience lies;

(iv) Whether it is necessary to maintain the *status quo*.

9.9 I do not doubt that there is a serious question to be determined herein. The Applicant contends that the Respondent encroached on traditional land in her chieftom, covering a 10,000 hectarage. The Respondents on the other hand contend that they hold a CoT to property/Farm No. 4809, which property is situated in Chief Mwinuna's area of Mpongwe District, and bordering the Applicant's Chieftom. Further, the Respondents contend that the area being claimed by the Applicant lies wholly within its 66,102.0429 hectares over which they exercise their rights as legitimate holders of the CoT.

9.10 It is thus clear that there are competing interests over this land. It is also clear that the issue of ownership of the subject property can only be resolved by way of a trial, where evidence can be adduced by each party. To that extent therefore, it is my view that there is a serious question to be resolved.

9.11 As regards the issue of whether damages would be an adequate remedy to atone for the damage, the words of Lord Diplock in the above cited case provide guidance where he stated at page 408 that:

“The governing principle is that the court should first consider whether, if the plaintiff were to succeed at trial in establishing his right to a permanent injunction, he would have sustained as a result of the defendants continuing to do what was sought to be enjoined between the time of the application and the time of trial, 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, no interlocutory injunction should normally be granted, however, strong the plaintiffs claim appeared to be at that stage.”

9.12 In our jurisdiction, guidance was given in the case of **Shell and BP Zambia Limited v. Conidaris and Others**⁴, where the Court held that:-

“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.”

9.13 Further guidance was proffered in the case of **Afritec Asset Management Company Limited and Another v The Gynae and Antenatal Clinic Limited and Another**⁵ where the Supreme Court considered the question of adequacy of damages in the context of that case and whether the injury was irreparable. It was stated that:

“... As a matter of fact, the appellants in their originating process have, in addition to claim for damages, a claim for a refund of all illegally levied levies the appellants have paid. This attests to the fact that even the appellants entertain no doubt that the damage is quantifiable; and as such, not irreparable. Clearly, therefore the damage that the applicant would suffer by the refusal to grant the injunction is not irreparable ...”

9.14 In the case of **Communications Authority v. Vodacom Zambia Limited**⁶ it was held that:

“An injunction will not be granted where damages would be an alternative adequate remedy to the injury complained of, if the applicant succeeds in the main action.”

9.15 At paragraph 20 of the affidavit in support, the Applicant claims that the main claim in the Cause before the High Court is for an order of injunction, and at paragraph 21, that the relief sought in paragraph (III) are incidental to the reliefs sought in the first two paragraphs in the statement of claim. That that is not a main relief. Having looked at the relief in question it is clear that it is not an incidental relief, but a substantive one, as it seeks an order for damages for trespass to the Applicant’s traditional land in her Chiefdom. The Court will have to decide whether there has been trespass to the Applicant’s land. This is not an incidental claim

9.16 In the **American Cynamid**¹ case, it was stated *inter alia* that:

“... if damages in the measure recoverable at Common Law would be adequate remedy, and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted,

however strong the plaintiff's claim appeared to be at that stage."

9.17 I hold that the injury that the Applicant would suffer if this injunction is not granted is not irreparable as it can be atoned for by payment of damages as pleaded. Further, the Applicant is dealing with a corporate entity, and has not shown that the Respondent is not in a financial position to pay the damages in the event that the main matter is determined in the Applicant's favour.

9.18 As regards the balance of convenience, it is clear that the same tilts in favour of the Respondents who hold a CoT to the land they claim, and which according to them lies in another Chief's area, and further that the 10,000 hectares being claimed by the Applicant is wholly in the area covered by the CoT.

9.18 What the Applicant would suffer in my view and based on the evidence on record is mere inconvenience, not injury which cannot be atoned for in damages.

9.19 I am fortified in my view, because an injunction should not be used as a device by which the applicant can attain or create new conditions to suit himself or herself. In the case of **Turnkey**

Properties v. Lusaka West Development Company Limited and Others⁷ it was held that an injunction:

“... cannot be regarded as a device by which the applicant can attain or create new conditions favourable only to himself, which tip the balance of contending interests in such a way that he is able or more likely to influence the final outcome by bringing about an alternative to the prevailing situation which may weaken the opponent’s case and strengthen his own.”

9.20 If the injunction were to be granted herein, it would mean that the operations of the Respondents would be affected. It would also mean restricting them from exercising their legal rights as enshrined in the CoT. The Respondents would suffer prejudice.

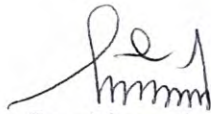
9.21 Based on the above, it is imperative that the *status quo*, as existed prior to the commencement of these proceedings should be maintained, until the rights of the parties have been properly and finally determined by the Court.

10.0 It is my view that this is not a matter in which I can interfere with decision of the lower Court as that decision is sound. I do

not find merit in the renewed application and it is dismissed.
For the avoidance of doubt, the Ex-parte Order of Injunction granted on 27th November, 2025 to the Applicant is hereby discharged.

10.1 Costs are for the Respondents to be taxed in default.

DELIVERED AT LUSAKA THIS 5TH DAY OF FEBRUARY, 2026.



Hon. Mrs. Justice A. M. Banda-Bobo
Court of Appeal Judge