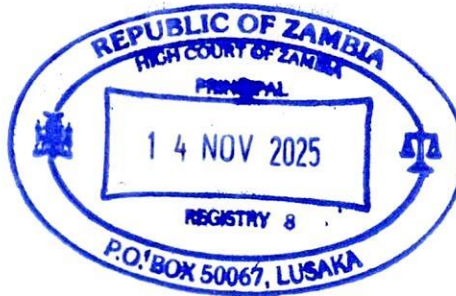


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)**

2021/HP/0632



BETWEEN:

GIRMAY TEWELDE

APPLICANT

AND

**TINA NYIRENDA (SUED IN HER CAPACITY AS
ADMINISTRATRIX OF THE LATE SIMPENDAKO NYIRENDA
MIKE YUMBA**

1ST RESPONDENT

2ND RESPONDENT

BEFORE HON. JUSTICE E. P. MWIKISA

For the Applicant: Mr. P.C. Muya of Messrs Muya & Company

For the 2nd Respondents: Mr. L.M. Chikuta of Messrs L.M. Chikuta Legal Practitioners

RULING

Cases Referred To:

1. *American Cyanamid v Ethicon* [1975] AC 396
2. *Hillary Bernard Mukosa v Michael Ronaldson* (S.C.Z Judgment No. 7 of 1993)
3. *Shell and BP Zambia Limited v Connidaris and Others* (1975) ZR
4. *Gideon Mundanda v Timothy Mulwani, Agricultural Finance Co. Ltd and S.S.S Mwiinga* (1987) ZR 29 (SC)
5. *Wesley Mulungushi v Catherine Bwale Mizi Chomba* (2004) ZR 96
6. *Turnkey Properties Limited v Lusaka West Development Company Limited* (1984) ZR 85

Legislation Referred To:

1. *Order 27 Rule 1 of the High Court Rules of the High Court Act, Chapter 27 of the Laws of Zambia*
2. *Order 29 Rule 1(1) of the Rules of the Supreme Court of England 1999 Edition, White Book*

This is the Applicant's application for an order of interim injunction made pursuant to Order XXVII Rule 1 of the High Court Rules of the High Court Act, Chapter 27 of the Laws of Zambia as read together with Order 29 Rule 1(1) of the Rules of the Supreme Court of England 1999 Edition, White Book. The said application is dated 3rd June, 2021, and is for an Order of interim injunction restraining the 2nd respondent whether by himself, servants or by his agents from building, disposing, harming or continuing to develop any structures on proposed subdivision of Farm L/3078 specifically in extent of 20m x 20m, Foxdale area, Lusaka pending further order of this Court or final determination of this matter for reasons that:

- (i) **The Applicant has suffered loss and damage as a result of the breach of contract by the 1st Defendant;**
- (ii) **The Applicant has suffered loss and damage as a result of the 2nd respondent's activities on his property;**
- (iii) **The Applicant will suffer irreparable damage if the respondents whether by themselves, servants or agents are not restrained from building, disposing, harming or continuing to develop structures on the Applicants property;**

- (iv) Unless restrained by an Order of the Court, the Respondents, its servants or agents continued activities on the Applicant's property will result in permanent damage to the state of the Applicant's property; and**
- (v) The Applicant's entire property is at eminent risk of being encroached and occupied by the Respondents and other persons' unknown.**

The said application was supported by an affidavit of equal date and deposed to by one Girmay Tewelde, the Applicant herein. It was deposed therein that the 1st respondent is the administratrix of the estate of the late Simpendako Nyirende by virtue of an order of appointment of administrator dated 17th March, 2016, as shown by exhibit marked "GT1".

It was also deposed that in the year 2018, the 1st Respondent advertised, for sale, a piece of land which formed part of the estate of the late Simpendeko Nyirenda situate at Foxdale Area in Lusaka Province in extent of 20m x 20m the same being a proposed subdivision of Farm L/3078/m at the value of K50,000. That on 23rd August, 2018, the Applicant and the 1st respondent executed a contract of sale for the proposed subdivision of Farm L/3078/m as shown by exhibit marked "GT 2".

The deponent further stated that it was agreed and inserted under the contract of sale that K45,000 would be paid upon exchange of

contract, which money was paid and that the remaining balance of K5,000 would be paid at a later stage. It was also deposed that the onus of performing obligations regarding subdividing and full conveyance such as state consent to assign, payment of property transfer tax and payment of all outstanding rates was on the 1st respondent as vendor. Further, that according to Clause 3 of the special conditions, the state consent to assign was to be done in 3 weeks and further, the date fixed for completion was six (6) weeks from the date of obtaining state consent to assign.

It was deposed that the 1st respondent, though afforded more than enough time, neglected or refused to perform her contractual obligations thereby being in breach of the same. Further that a year after the Applicant purchased the said proposed subdivision, the 1st respondent sold the same to the 2nd respondent. That the 2nd respondent begun building a house on the said proposed subdivision despite the Applicant's efforts to stop the 2nd respondent from encroaching on the piece of land. That the Applicant further engaged the aid of lawyers who drafted a letter of demand to the 2nd respondent to put a stop to the illegal encroachment but that the 2nd respondent has still refused or neglected to do so.

The Applicant deposed that the 2nd respondent neither has title nor a license to be on the property in issue and that the Applicant has been advised by Counsel and believes it to be true that there are triable issues in this matter. That unless restrained by an Order of the Court, the 2nd respondent's continued activities will result in permanent damage to the state of the property in issue. It was deposed that this is a proper case in which this Court can exercise its power and grant an Order of Interim Injunction.

On the other hand, the 2nd respondent filed an affidavit in opposition dated 20th September, 2021. The said affidavit was filed without leave of court as there is no evidence on record that the respondents or defendants herein, filed or entered appearance and defence to the matter. For that reason, the respondent's affidavit in opposition is expunged from the record. The order of interim injunction was granted ex parte by my Learned brother Judge Muma on 28th June, 2021.

When the matter came up for interparte hearing on 5th April, 2022, Counsel for the Applicant, Ms Kabalata, submitted that the matter was coming up for inter parte hearing on the ex parte order that was granted on 28th June, 2021. She went on to state that the

record will show that the Plaintiff filed an affidavit in support plus skeleton arguments and list of authorities.

I note that the 1st and 2nd respondents were not before Court when the matter came up for hearing, neither have they entered appearance in defence to the main matter as mentioned above.

I have carefully considered the affidavit evidence as well as the list of authorities and skeleton arguments on record. The case of **American Cyanamid v Ethicon [1975] AC 396¹** is instructive in cases such as this. In that case, the Court inter alia held as follows:

- “1. All that was necessary at this stage was that the claimant should show that there was a real issue to be tried.***
- 2. The Court should consider whether damages were an adequate remedy for a claimant if an injunction was not granted. If so, an injunction would not be available.***
- 3. If damages were not an adequate remedy, then the Court should then ask whether the claimant would be able to give an undertaking in damages to the Defendant.***
- 4. If these factors were evenly balanced, the Court should consider maintaining the status quo.***

In an application for an interim injunction, the Court should satisfy itself that there is a serious question to be tried at the hearing and that on the facts before it, the plaintiff is entitled to a right to relief. In the case of **Hillary Bernard Mukosa v Michael Ronaldson (S.C.Z Judgment No. 7 of 1993)²** the Court held that:

“An injunction would only be granted to a plaintiff who established that he had a good and arguable claim to the right which he sought to protect.”

In casu, the record shows that the 1st defendant herein was granted letters of administration in respect of the estate of the late Nyirenda Simpendako on 17th March, 2016, thereby allowing her to sell the property in issue. The record also shows a contract of sale between the Applicant and the 1st defendant for the year 2018. The contract was however executed by both parties and their witnesses. I also note that the contract does not spell out the property number of the property subject of the sale agreement. However, a copy of the survey diagram relating to Lot 3078/M was attached to the said contract of sale. A further scrutiny of the contract of sale revealed that special condition number 7 stated that the purchase price was K50,000. The said contract however shows that an amount of K45,000 was paid leaving a balance of K5,000.

Further, it is trite that if the Court finds that there is a serious question to be tried on the merits of the substantive claim, the Court should consider whether the plaintiff will be adequately compensated by an award of damages at trial as stated in the case

of **Shell and BP Zambia Limited v Connidaris and Others (1975)**

ZR³. The Supreme Court, in that case held, inter alia, that:

“(vi) 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.”

In casu, the property in contention is real property. Damages cannot be an adequate compensation when one is dealing with an interest in a particular piece of land. I am fortified by the case of **Gideon Mundanda v Timothy Mulwani, Agricultural Finance Co. Ltd and S.S.S Mwiinga (1987) ZR 29 (SC)⁴** as well as the case of **Wesley Mulungushi v Catherine Bwale Mizi Chomba (2004) ZR 96⁵** where the Supreme Court stated as follows:

“The matter in dispute is land, a very valuable commodity whose loss may not adequately be atoned in damages.”

In light of the authorities above, I find that damages would not be an adequate remedy in this case. In line with the case of **Turnkey Properties Limited v Lusaka West Development Company Limited (1984) ZR 85⁶**, the Supreme Court held that:

“An interlocutory injunction is appropriate for the preservation or the restoration of a particular situation pending trial.”

The Applicant deposed that the 2nd respondent begun building a house which is at window level, on the property in issue. I am therefore of the considered view that the Applicant herein has satisfied the ingredients required for the grant of an interim injunction.

I find that the factors in this case are evenly balanced and thus order that the status quo be maintained. I accordingly grant the order of interim injunction until final determination of the matter.

Leave to appeal is granted.

Dated at Lusaka the14th..... day of *November*....., 2025


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ELITA PHIRI MWIKISA
JUDGE