

IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)

2023/HP/1615

BETWEEN:

LUMINARA FARMS LIMITED

PLAINTIFF

AND

LOMBE PHYLLIS CHIBESA KUNDA

DEFENDANT

BEFORE HON. LADY JUSTICE S. CHOCHO IN CHAMBERS.

For the Plaintiff (s):

Mr. G. Mataa and Mr. B. Mweemba – Messrs Keith Mweemba and Company.

For the Defendant (s):

Mr. Y. Daka – Messrs George Kunda and Company.

Cases referred to:

- 1. American Cyanamid Company Vs. Ethicon Limited (1975) AC 396.*
- 2. American Cyanamid Company Vs. Ethicon Limited (1975) AC 396.*
- 3. Turnkey Properties Vs. Lusaka West Development Company Limited, BSK Chiti.*
- 4. Zambia State Insurance Cooperation Limited Vs. Dennis Mulope Mulikelela SCZ Judgment No. 9 of 1990.*

Legislation referred to:

- 1. Order XXVII, Rule 4 of the High Court Rules, Chapter 27, Laws of Zambia.*

R U L I N G

1. INTRODUCTION

1.1. This Ruling is in respect of an application in which the Plaintiff seeks an Order of Injunction to restrain the Defendant whether by herself or servants or agents or otherwise whosoever from pursuing any conduct which amounts to harassment or intimidation of the Plaintiff's servants or agents, trespass or interference with the quiet enjoyment of Property Number CHIBO/4014648, Number CHIBO/4014649 and Number CHIBO/4018654 situate in Chibombo in the Central Province of Zambia until final determination of the matter or further Order of this Court.

2. BACKGROUND

2.1. The background to this matter as per pleadings and Affidavit Evidence presented before this Court is that the Plaintiff Company is title holder of the "Subject Properties" issued by the Commissioner of Lands on various date in the year 2021.

2.2. The Defendant maintains that portions of the land the Plaintiff claims to hold title, are in fact on her property/piece of land in extent of 500 Hectares purchased in 2017.

3. AFFIDAVIT EVIDENCE

3.1. The Plaintiff relies on the averments in its Affidavit in Support of the Summons herein. The Plaintiff appears to have filed an Affidavit in Reply dated 13th November, 2023 which Affidavit I shall not consider

by reason that the same was filed without leave of Court. The offending Affidavit is thus expunged from the record.

- 3.2.** The Plaintiff avers that it is the legal owner of the “Subject Properties” holding Certificates of Title as follows;
- (a) Farm No. CHIBO/4014648 Certificate Number 106407 issued on 18th August, 2021.
 - (b) Farm No. CHIBO/4014649 Certificate of Title Number 106402 issued on 18th August, 2021.
 - (c) No Certificate of Title is exhibited for Farm No. CHIBO/4018654.
- 3.3.** The Plaintiff avers that the Defendant, through her agents did trespass and harass its servants and agents.
- 3.4.** The Plaintiff further avers that the Defendant has caused to be issued Police Call Out for the Plaintiff’s servants and agents.
- 3.5.** That the Defendant’s actions have caused interference with the Plaintiff’s agricultural investments on the “Subject Properties.”
- 3.6.** The Plaintiff seeks the Court to Order Injunction to protect it from harassment form the Defendant.
- 3.7.** The Defendant opposes the Injunction application by Affidavit Evidence.
- 3.8.** The Defendant avers that in 2017 she bought 500 hectares of land in Chibombo which land is currently in the process of obtaining title (from customary to leasehold).

- 3.9.** The Defendant further avers that portions of what the Plaintiff claims to be under its Certificate of Title is on the Defendant's 500 hectares of land.
- 3.10.** The Defendant avers that she is in possession of authorization from Traditional Leaders and recommendation from Chibombo District Council for conversion of the 500 hectares from customary to leasehold tenure.
- 3.11.** The Defendant also avers that the Plaintiff did not obtain good title from whomever they bought the land parcels, who she claims could not have followed the correct procedure in obtaining the Certificates of Title.
- 3.12.** The Defendant avers that the parcels of land must at the very least be preserved until final determination of the action.

4. THE LAW

- 4.1.** I have had occasion to review and consider the application, having heard counsel for the Plaintiff and the Defendant, the parties' Affidavit Evidence, Skeleton Arguments and List of Authorities cited herein, for which I am grateful.
- 4.2.** This Court has jurisdiction to grant an injunction pending the hearing and determination of an action, upon the application by either party to an action. The power is provided for under **Order XXVII of the High Court Rules**. Where a party to an action is apprehensive that their property maybe threatened by the other party it is my considered view that such a party has the right to seek a protective order from the Court.

Order XXVII, Rule 4 of the High Court Rules, provides that:-

"In any suit for restraining the defendant from the committal of any breach of contract or other injury and whether the same be accompanied by any claim for damages or not, it shall be

lawful for the Plaintiff, at any time after the commencement of the suit, and whether before or after judgment to apply to the Court or a Judge for an injunction to restrain the Defendant from the repetition or the continuance of the breach of contract or injury of a like kind arising out of the same contract, or relating to the same property or right, and such injunction maybe granted by the Court or a Judge on such terms as to the duration of the injunction, keeping an account, giving security or otherwise, as to the Court or a Judge shall deem reasonable and just: Provided that any order for an injunction maybe discharged, varied, or set aside by the Court or a Judge, on application made thereto by any party dissatisfied with such order.”

4.3. It is trite law that the Court has discretionary power to grant the equitable remedy of an injunction.

4.4. There is a plethora of authorities on the test that, the Court is to apply when considering whether an injunction should be granted. The test was laid down in the case of **American Cyanamid Company Vs. Ethicon Limited**, in which Lord Diplock stated;

“The Court no doubt must be satisfied that the claim is not frivolous/vexations. In other words, that there is a serious question to be tried ... unless the material available to the Court at the hearing of the application for an interlocutory injunction fails to disclose that the Plaintiff has any real prospects of success to consider whether the balance of convenience lies in favour of granting/refusing the interlocutory relief that is sought.”

4.5. I have considered the authorities as stated in the case of **Shell and BP Limited Vs. Conidaris and Others**, 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; were inconvenience is not enough. Irreparable injury means, injury which is substantial and can never be adequately remedied or atoned for in damages, not injury which cannot be possibly repaired”.

4.6. In the matter of ***Zambia State Insurance Cooperation Limited Vs. Dennis Mulope Mulikelela***, it was stated by Gardener AJS that:-

“... of course, in order to entitle the Plaintiff to an interlocutory injunction, though the Court is not called upon to decide finally on the right to the parties, it is necessary that the Court should be 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 Plaintiff are entitled to relief”.

5. COURT’S DECISION

5.1. The clear and undisputed fact is that there is land known as Farm No. CHIBO/4014648, No. 4014649 and No. 4018655 situate in Chibombo in Central Province, portions of which is the subject of this legal dispute.

5.2. In deciding whether/not to grant an injunction herein, I have applied my mind to and considered the three basic principles of law and guidelines which are as follows:

- a) Whether the Applicant has established a prima facie case with a probability of success.
- b) Whether the Applicant is likely to suffer irreparable loss if an injunction is not issued.

c) Where in doubt the Court will consider the balance of convenience in the circumstances of the case.

5.3. I have considered the authorities as stated in the case of **Shell and BP Limited Vs. Conidaris and Others**, 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; were inconvenience is not enough. Irreparable injury means, injury which is substantial and can never be adequately remedied or atoned for in damages, not injury which cannot be possibly repaired”.

5.4. In the matter of **Zambia State Insurance Cooperation Limited Vs. Dennis Mulope Mulikelela**, it was stated by Gardener AJS that:-

“... of course, in order to entitle the Plaintiff to an interlocutory injunction, though the Court is not called upon to decide finally on the right to the parties, it is necessary that the Court should be 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 Plaintiff are entitled to relief”.

5.5. In casu the Plaintiff seeks to restrain the Defendant from harassing, its servants/agents, trespassing or interfering with the Plaintiff’s quiet enjoyment of the “Subject Properties”.

5.6. The relief of Injunction Order is an equitable remedy, and it is granted at the Court’s discretion. Should this Court grant such order, the object would be to maintain status quo until the question at issue between the parties can be determined. I am extremely mindful that the discretion is to be exercised judiciously.

- 5.7. The authorities in the cases of ***Turnkey Properties Vs. Lusaka West Development Company Limited, BSK Chiti*** (sued as Receiver) **and** ***Zambia State Insurance Cooperation Limited***, also the matter of ***American Cyanamid Company Vs. Ethicon Limited*** Cited above, the Supreme Court referred to the issue of the balance of convenience which should be considered by the Court, by determining where it has or in whose favour the scale tilts and whether more harm would be done by granting or refusing to grant the injunction.
- 5.8. I have perused and studied the Affidavit evidence provided by the parties on this application and particularly, so the exhibits attached thereto. I am of the view that it is not open for this Court to at this stage determine the question of legality of the process of change of tenure of the "Subject Properties".
- 5.9. Both Parties aver that they seek to develop the portion/s under dispute. They also appear to have sought to settle their dispute amicably, which unfortunately broke down.
- 5.10. The facts of this case present with peculiar issues as to possession, title and these are questions that can only be attended to at trial. However, I still need to answer/deal with the issue of whether/not to confirm the injunction.
- 5.11. I am alive to the position that land is property that is peculiar and each different from the other, and hence the need to preserve the land.
- 5.12. I am convinced that a Injunction is indeed desirable or necessary in this matter, however, it is my considered opinion that it cannot be on the conditions/terms argued by the Plaintiff.

6. CONCLUSION

- 6.1.** For the foregoing reasons, it is hereby ordered that the Injunction effective from date of this Ruling is that none of the Parties that is Plaintiff or Defendant or their servants, agents will deal with the portions of land that is in dispute, in any way pending the hearing and final determination of the matter or until further Order of this Court.
- 6.2.** The Plaintiff is ordered to remove such of its equipment as is on the portions under dispute.
- 6.3.** Matter to come up for Scheduling Conference on 30th January, at 08:20 hours.
- 6.4.** Costs in the cause.
- 6.5.** Leave to appeal is granted.

Delivered at Lusaka on the 10th January, 2024



**S. CHOCHO
JUDGE**

