

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



2024/HP/0656

ZAM-KIRIN MINING LIMITED

PLAINTIFF

AND

**MANDLA MULTI-PURPOSE CO-OPERATIVE
SOCIETY LIMITED (100%)
KAMBISHI MULTI-PURPOSE CO-OPERATIVE
SOCIETY (100%) LIMITED
NEW GENERATION MULTI-PURPOSE SOCIETY**

1st DEFENDANT

2nd DEFENDANT

3rd DEFENDANT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 4th DAY
OF JULY, 2024**

For the Plaintiff : Ms T. Chalwa, Messrs Frank Tembo &
Partners
For the 1st, 2nd & 3rd Defendants : Ms Tapiwa Kaemba, Messrs Ilunga &
Company

R U L I N G

CASES REFERRED TO:

1. *American Cyanamid v Ethicon Limited* 1975 AC 396
2. *Shell and BP Zambia Limited v Conidaris and others* 1975 ZR 174
3. *Ahmed Abad v Turning and Metals Limited* 1987 ZR 86
4. *Hina Furnishing Lusaka Limited v Mwaiseni Properties Limited* 1983 ZR 40
5. *Hillary Bernard Mukosa v Michael Ronaldson* 1993-1994 ZR 26.

LEGISLATION REFERRED TO:

1. *Mines and Minerals Development Act No 11 of 2015*

OTHER WORKS REFERRED TO:

1. *Zambian Civil Procedure: Commentary and Cases by Patrick Matibini*
Vol 1, 2017

1. INTRODUCTION

- 1.1 This ruling is on an application, which was filed by the Plaintiff, Zam-Kirin Mining Limited on 13th May, 2024 pursuant to **Order 27 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, 1965, 1999 Edition** for an Order of interim injunction.
- 1.2 The Order of injunction is sought to restrain the Defendants, Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society whether by themselves, their servants, their agents or whomsoever acting on their behalf, from mining, trespassing, encroaching, erecting any type of building and or disturbing Zam-Kirin Mining Limited's peaceful enjoyment of the mining area pending determination of the matter.
- 1.3 The application was supported by an affidavit and a List of Authorities and Skeleton Arguments. In opposition, Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society filed an affidavit in opposition and a List of Authorities and Skeleton Arguments in opposition on 30th May, 2024.
- 1.4 An affidavit in reply was filed on 6th June, 2024.

2. BACKGROUND

- 2.1 Zam-Kirin Mining Limited commenced this action on 13th May, 2024, by Writ of Summons which was accompanied by

a statement of claim and the other requisite documents seeking:

- i. An Order of injunction restraining Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society by themselves, their agents, servants or whomsoever from trespassing, and mining on Zam-Kirin Mining Limited's area.*
 - ii. A declaration that Zam-Kirin Mining Limited is the licenced owner of the said mine.*
 - iii. Damages for trespass.*
 - iv. Damages for mental anguish and stress.*
 - v. Interest.*
 - vi. Costs.*
 - vii. Any other relief that the Court may deem fit.*
- 2.2 Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society entered appearance and filed their defence on 30th May, 2024. On the same date, they filed the opposition to the application for an Order of injunction.

3. SUBMISSIONS AT THE HEARING

SUBMISSIONS BY COUNSEL FOR ZAM-KIRIN MINING LIMITED

- 3.1 At the hearing of the application, Counsel for Zam-Kirin Mining Limited, stated that she placed reliance on the affidavit which was filed in support of the application,

together with the List of Authorities and Skeleton Arguments in support. Further reliance was placed on the affidavit in reply which was filed on 6th June, 2024.

- 3.2 In augmenting, Counsel stated that **Section 16(1) of the Mines and Minerals Development Act No 11 of 2015** provides that an applicant of a mining right, which is held by another, shall obtain the consent of the initial rights owner. She added that the Section further provides that consent shall be given if it does not compromise the owner of the rights.
- 3.3 It was stated that Zam-Kirin Mining Limited had held a Large-Scale Mining Licence since June 2021, and Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society did not obtain the consent of Zam-Kirin Mining Limited, who holds an exploration licence. The contention was that the action was therefore illegal and amounted to trespass.
- 3.4 Thus, the injunction was necessary to protect Zam-Kirin Mining Limited from irreparable damage and injury, as if the injunction were to be denied, and the Court later found in favour of Zam-Kirin Zambia Limited, it would be difficult to assess or quantify the minerals that Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society would have removed from the exploration area.

- 3.5 Based on that, the prayer was that the Order of injunction should be granted.

RESPONSE BY COUNSEL FOR MANDLA MULTIPURPOSE CO-OPERATIVE SOCIETY LIMITED (100%), KAMBISHI MULTIPURPOSE CO-OPERATIVE SOCIETY LIMITED (100%) AND NEW GENERATION MULTI-PURPOSE SOCIETY

- 3.6 The submission in response, was that reliance was placed on the affidavit in opposition and the Skeleton Arguments and List of Authorities in opposition. Counsel asked that the application be dismissed as the law that governs injunctions is very clear. In that respect, submission was made that there is a plethora of cases that had laid down the principles that govern the granting of Orders of injunction.
- 3.7 It was stated that the affidavit in reply showed that Zam-Kirin Mining Limited holds an exploration licence, and **Section 2 of the Mines and Minerals Development Act** states that exploration is a search for the removal of minerals. It was submitted that an exploration licence does not give mining rights, and it was therefore important for Zam-Kirin Mining Limited to state what rights would be infringed by Mandla Multipurpose Co-operative Society Limited (100%), Kambishi Multipurpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society if the Order of injunction was not granted.
- 3.8 Further in submission, Counsel stated that **Section 26 of the Mines and Minerals Development Act** provides that

the extraction of minerals by the holder of licence, shall be done with the express authority of the Director of Mines, and Zam-Kirin Mining Limited had not exhibited such authority. Thus, it was difficult to understand what rights Zam-Kirin Mining Limited was claiming over the minerals that would be mined by Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society.

- 3.9 It was submitted that not having demonstrated what rights would be infringed or what harm Zam-Kirin Mining Limited would suffer, the application should fail. Counsel also stated that Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society are holders of artisanal licences, and according to **Section 2 of the Mines and Minerals Development Act**, they are entitled to mine.
- 3.10 Therefore, to grant the Order of injunction would be to prevent them from exercising their rights, duly acquired, as deposed to in paragraph 6 of the affidavit in opposition. Counsel added that **Section 52 of the Mines and Minerals Development Act** provides that the consent of the Chief has to be obtained, and they had in paragraph 5 of the affidavit in opposition shown that this was done.
- 3.11 In conclusion, the submission was that the consent of the surface holder was done in accordance with the above, and

Section 7 of the Lands Act which provides for customary tenure.

REPLY BY COUNSEL FOR ZAM-KIRIN MINING LIMITED

3.12 There was no reply.

4. DECISION OF THIS COURT

4.1 I have considered the application. **Order 27 Rule 1 of the High Court Act, Chapter 27 of the Laws of Zambia** states that:

"1. In any suit in which it shall be shown, to the satisfaction of the Court or a Judge, that any property which is in dispute in the suit is in danger of being wasted, damaged or alienated by any party to the suit, it shall be lawful for the Court or a Judge to issue an injunction to such party, commanding him to refrain from doing the particular act complained of, or to give such order, for the purpose of staying and preventing him from wasting, damaging or alienating the property, as to the Court or a Judge may seem meet, and, in all cases in which it may appear to the Court or a Judge to be necessary for the preservation or the better management or custody of any property which is in dispute in a suit, it shall be lawful for the Court or a Judge to appoint a receiver or manager of such property, and, if need be, to remove the person in whose possession or custody the property may be from the possession or

custody thereof, and to commit the same to the custody of such receiver or manager, and to grant to such receiver or manager all such powers for the management or the preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as to the Court or a Judge may seem proper.”

- 4.2 **Order 29 Rule 1 of the Rules of the Supreme Court of England, 1965, 1999 Edition** provides that:

“(1) application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.”

- 4.3 The gist of the affidavit which was filed in support of the application, and which was deposed to by Du Changlian, a director in Zam-Kirin Mining Limited, was that Zam-Kirin Mining Limited is the owner of a mine in Lufwanyama District, and it had a mining licence, which was exhibited as ‘DC1’, pursuant to which it had been doing mining.
- 4.4 The assertion was that to Zam-Kirin Mining Limited’s surprise, Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose

Society had entered the land, and were mining in the area illegally. The averment that efforts to stop Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society from mining in the area had been met with violence.

- 4.5 It was also deposed that as at 7th May, 2024, Zam-Kirin Mining Limited had received information that Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society were about to start moving out the materials that they had illegally mined from the site, which would occasion loss to Zam-Kirin Mining Limited.
- 4.6 In the List of Authorities and Skeleton Arguments, Zam-Kirin Mining Limited relied on the case of ***American Cyanamid v Ethicon Limited*** ⁽¹⁾ stating that the Court in matter held that:

“The object of the interlocutory injunction is to protect the Plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the Plaintiff’s need for such protection must be weighed against the corresponding need of the Defendant to be protected against injury resulting from his having

been prevented from exercising his own legal rights for which he could not be adequately compensated under the Plaintiff's undertaking in damages if the uncertainty were resolved in the Defendant's favour at the trial."

4.7 Further reliance was placed on the case of **Shell and BP Zambia Limited v Connidaris and others** ⁽²⁾ where the Supreme 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, not injury which cannot possibly be repaired."

4.8 Based on the above, it was argued that the Order of injunction should be granted, and that Zam-Kirin Mining Limited had demonstrated that it has a good and arguable case, as guided in the case of **Hillary Bernard Mukosa v Michael Ronaldson** ⁽⁵⁾. Also relied on, was the case of **Ahmed Abad v Turning and Metals Limited** ⁽³⁾ where it was held that:

"An injunction is inappropriate when damages would be an adequate remedy."

4.9 The averment in the affidavit in opposition which was deposed to by Moses Ngwena, the Executive Director of

Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society, was that prior to the above cooperatives obtaining artisanal mining licences from the Ministry of Mines and Minerals Development, they had noted that the area of interest was under the Chiefdom of Chief Shibuchinga.

4.10 Thus, they applied to obtain the written consent of the said Chief, and they were granted the same, which was exhibited as 'MN1'. It was deposed that on Chief's consent being obtained, Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society applied for artisanal mining licences, and they were granted the following:

- i. An Artisanal mining licence No 36931-HQ-AMR on 28th March, 2024;
- ii. An Artisanal mining licence No 36929-HQ-AMR on 2nd April, 2024.

4.11 It was stated that the said Artisanal Mining Licences were exhibited as 'MN2'. Moses Ngwena deposed that upon the Artisanal Mining Licences being granted, Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society commenced artisanal mining in the areas covered by the licences.

- 4.12 Then Zam-Kirin Mining Limited claimed a right, stating that it held a Large-Scale Exploration Licence for area, but it did not show Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society the accompanying pegging certificate which indicates the extent of Zam-Kirin Mining Limited's Large-Scale Exploration Licence.
- 4.13 Still in deposing, Moses Ngwena stated that the artisanal mining which was being done in the area, was a source of income and livelihood for the members of Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society, and the youth that they employed.
- 4.14 Other averments in the affidavit relate to the right to relief not being clear, or what harm Zam-Kirin Mining Limited would suffer if the Order of injunction was not granted, which are legal arguments, and are proscribed by **Order 5 Rule 15 of the High Court Rules**, which provides that:
- “An affidavit shall not contain extraneous matter by way of objection or prayer or legal argument or conclusion.”***
- 4.15 In the Skeleton Arguments and List of Authorities, Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society

contended that they are holders of Artisanal Mining Licences which they had exhibited as 'MN2' to the affidavit in opposition. They stated that the said licences were granted under the Mines and Minerals Development Act.

- 4.16 Citing the case of ***Hina Furnishing Lusaka Limited v Mwaiseni Properties Limited*** ⁽⁴⁾ it was argued that the jurisdiction to grant Orders of injunction must be exercised judicially. Further argument was made that the case of ***American Cyanamid Limited v Ethicon Limited*** ⁽¹⁾ held that the purpose of an Order of injunction, is to preserve the status quo, and that a plaintiff must show that there is a serious question to be tried.
- 4.17 The contention was that while Zam-Kirin Mining Limited had alleged that Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society were mining illegally, they had however demonstrated that they have Artisanal Mining Licences which they obtained on following procedure.
- 4.18 As such, Zam-Kirin Mining Limited had not demonstrated that there is a serious question to be tried. It was further argued that Zam-Kirin Mining Limited could be adequately compensated by an award of damages, and therefore, the Order of injunction should not be granted, as was guided in the case of ***American Cyanamid v Ethicon Limited*** ⁽¹⁾.
- 4.19 Relying on the learned author, ***Patrick Matibini*** in the book, ***Zambian Civil Procedure: Commentary and Cases by Vol***

1, 2017, Lexis Nexis at page 442, the submission was that in applying for an Order of injunction, an applicant must make an undertaking as to damages.

- 4.20 In the affidavit in reply, which was deposed to by Shen Shi, a director in Zam-Kirin Mining Limited, averment was made that Mandla Multi-purpose Co-operative Society Limited (100%), Kambishi Multi-purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society did not follow procedure as they did not obtain the consent of Zam-Kirin Mining Limited, which holds a Large-Scale Exploration Licence over the area in which they were interested.
- 4.21 It was also deposed, that it could have been established that Zam-Kirin holds a Large-Scale Exploration Licence over the area by entering the co-ordinates in the electronic Zambia Mining Cadastre portal at the Ministry of Mines and Minerals Development, or by conducting a physical search at the said Ministry. Exhibited as 'SS1' was a printout from the Zambia Mining Cadastre portal showing a status of the area in question.
- 4.22 Other averments were made, alleging that the licences were dubiously acquired, which are legal arguments and contravene **Order 5 Rule 15 of the High Court Rules**. It was also stated that Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society did not obtain clearance from the Zambia

Environmental Management Agency. The pegging Certificate and Large-Scale Exploration Licence were exhibited as 'SS3' and 'SS4'.

4.23 Further averment was made that other mining cobalt, copper and emeralds which Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society are restricted to, they were also mining quartz.

4.24 As rightly argued, there are principles that govern the granting of Orders of injunction which were laid down in the case of ***American Cyanamid v Ethicon Limited*** ⁽¹⁾. They can be summarised as follows:

- i. *Is there a serious question to be tried?*
- ii. *If yes, would damages be an adequate remedy?*
- iii. *If yes, the Order of injunction should not be granted.*
- iv. *If no, where does the balance of convenience lie?*

IS THERE A SERIOUS QUESTION TO BE TRIED?

4.25 In answering that question, Zam-Kirin Mining Limited argued that Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society are illegally mining in an area in which it holds a Large-Scale Exploration Licence.

4.26 It contended that pursuant to ***Section 16 of the Mines and Minerals Development Act***, the said cooperatives should have obtained its' consent to mine in the area.

- 4.27 The response was that Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society are in fact holders of Artisanal Mining Licences which they obtained from the Ministry of Mines, after they obtained the consent of Chief Shibuchinga in whose jurisdiction the mining area is, pursuant to **Section 52 of the Mines and Minerals Development Act.**
- 4.28 They further argued that the Artisanal Mining Licences that they hold, authorise them to mine, and they obtained the authority of the Director of Mines to do so, pursuant to **Section 26 of the Mines and Minerals Development Act.** The argument in opposition, was also that under **Section 2 of the said Mines and Minerals Development Act,** exploration is a search for the removal of minerals.
- 4.29 Therefore, as Zam-Kirin Mining Limited holds a Large-Scale Exploration Licence, and not a mining licence, the right to relief is not clear, and it had not demonstrated what rights Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society would infringe if the Order of injunction was not granted.
- 4.30 The holding in the case of **Shell and BP Zambia Limited v Conidaris and others** (2), which has been cited above, clearly shows 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. Further, that mere inconvenience is not enough.

- 4.31 In this matter, Zam-Kirin Mining Limited agreed that it holds a Large-Scale Exploration Licence. That licence which was exhibited as 'DC1' to the affidavit which was filed in support of the application, shows that it was granted for a period of Four (4) years from 29th June, 2021. The area covered under the licence was described in the schedule, and it was for prospecting for Aquamarine, lead, copper, Quartz, Mica, Cobalt, Emeralds, Titanium, Zinc and Gold.
- 4.32 The Artisanal Mining Licences for Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society which are exhibited as 'MN2' to the affidavit in opposition, show that Mandla Multi-Purpose Co-operative Society Limited (100%) was granted an Artisanal Mining Licence to mine Quartz for Two (2) years from 28th March, 2024, while Kambishi Multi-Purpose Co-operative Society Limited (100%) was granted the right to mine Copper, Emeralds and Cobalt for Two (2) years from 28th March, 2024.
- 4.33 New Generation Multi-Purpose Society was granted the right to mine Copper, Emeralds and Cobalt for Two (2) years from 2nd April, 2024.
- 4.34 **Section 2 of the Mines and Minerals development Act No of 2015** defines *artisanal mining* as:

“artisanal mining” means an artisan’s mining operation undertaken by a citizen pursuant to a mining licence granted under Part III;”

4.35 That section defines *exploration* as:

““exploration” means the search for a mineral by any means and carrying out of such works, and removal of such samples, as may be necessary to test the mineral bearing qualities of any land and define the extent and determine the economic value of a mineral deposit;”

4.36 The rights under an Exploration Licence are provided for in **Section 23 (2) of the Act**, as:

“(2) An exploration licence confers on the holder exclusive rights to carry on exploration in the exploration area for the minerals specified in the licence and to do all such other acts and things as are necessary for, or incidental to, the carrying on of those operations.”

4.37 *Mining* is defined in the Act as:

““mining” means the extraction of material, whether solid, liquid or gaseous, from land or from beneath the surface of the earth in order to win minerals, or any operations directly or indirectly necessary or incidental to the extraction of the material;”

4.38 Going by the definition of mining and exploration under the Act, it can be seen that mining enables the holder of a mining

licence to extract materials, while an exploration licence authorises the holder to search for minerals and remove them for purposes of testing.

4.39 It will further be seen that as regards the holders of exploration licences, **Section 26 (1) of the Act** provides that:

“26. (1) Except for the purpose of having the mineral analysed or conducting tests on the mineral, a holder of an exploration licence shall not remove any mineral from the exploration area without the written permission of the Director of Geological Survey and shall, when removing any mineral, comply with such conditions as the Director of Geological Survey may specify in the written permission.”

4.40 Therefore, an exploration licence confers rights on a holder, which are different from those which are conferred on one who holds a mining licence.

4.41 However, **Section 16 (1) of the Mines and Minerals Development Act** is as follows in provision:

“16. (1) 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.”

4.42 *Mining Right* is defined in *Section 2 of the Act* as:

“mining right” means a right granted under subsection (1) of section thirteen;

4.43 The provisions of **Section 13 (1) of the Act** are:

“13. (1) The following mining rights may be granted under this Act:

(a) an exploration licence; and

(b) a mining licence.”

4.44 Therefore, while Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society argued that they have artisanal mining licences which give them the right to mine, and that Zam-Kirin Mining Limited only holds an exploration licence which does not entitle it to mine, but to search for minerals, **Section 16 (1) of the Mines and Minerals Development Act** is clear that a person who acquires a mining right over an area for which mining rights are held by another, shall obtain the consent of the person who was granted the mining rights earlier.

4.45 No such consent which was obtained from Zam-Kirin Mining Limited has been exhibited. As such, Zam-Kirin Mining Limited has a right to relief, on the face of it, and it raises a serious question to be tried.

WHETHER DAMAGES WOULD SUFFICE?

4.46 Having found that there is a serious question to be tried, the next question that arises is whether damages would suffice, if the Order of injunction is not granted?

4.47 Zam-Kirin Mining Limited argued that damages would not suffice, as the minerals that would have been removed by

Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society would not be able to be quantified, if the Order of injunction is not granted.

4.48 The argument by Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society was that damages would suffice in any event.

4.49 Indeed, quantifying the exact amount of minerals that would have been taken out would be difficult in the event that Zam-Kirin Mining Limited succeeded at trial. That being the position, damages cannot be said to be an adequate remedy if an Order of injunction is not granted. Thus, the balance tilts in favour of the Order of Injunction being granted, which is where the balance of convenience lies.

5. CONCLUSION

5.1 I accordingly grant the Order of injunction, restraining Mandla Multi-Purpose Co-operative Society Limited (100%), Kambishi Multi-Purpose Co-operative Society Limited (100%) and New Generation Multi-Purpose Society from carrying out any mining, trespassing, encroaching, erecting any type of building and or disturbing Zam-Kirin Mining Limited's peaceful enjoyment of the area for which Zam-Kirin Mining Limited holds an exploration licence until further Order of the Court.

5.2 The matter shall come up for Orders for Directions on 17th July 2024 at 12:30 hours. Costs shall be in the cause, and leave to appeal is granted.

DATED AT LUSAKA THE 4th DAY OF JULY, 2024

S. Kaunda

**S. KAUNDA NEWA
HIGH COURT JUDGE**

