

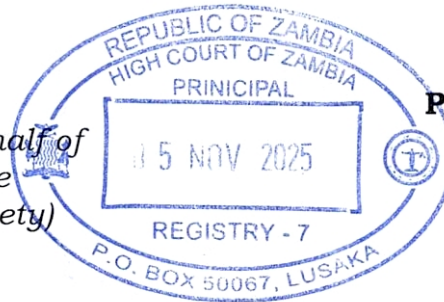
**IN THE HIGH COURT OF ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
(Civil Jurisdiction)

2025/HP/0997

BETWEEN:

**WILLIAM FRANKLIN**

(suing on his own behalf and on behalf of  
7 other former Board Members of the  
Livestock Services Co-operative Society)

**PLAINTIFF**

AND

**LIVESTOCK SERVICES CO-OPERATIVE SOCIETY****DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 5<sup>th</sup> DAY  
OF NOVEMBER, 2025**

For the Plaintiff : Mr M. Malambo, Mr Mabenga and Ms S. Kunda, Messrs  
Howard Marietta and Peterson  
For the Defendant : Mr N. Nchito SC and Mr C. Hamwela, Messrs Nchito and  
Nchito Advocates

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## **R U L I N G**

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CASES REFERRED TO:

1. *American Cynamid v Ethicon Limited* 1975 AC 396
2. *Shell and BP Zambia Limited v Conidaris and others* 1975 ZR 175
3. *Harton Ndove v National Education Company Limited* 1980 ZR 184
4. *Garden Cottage Foods Limited v Milk Marketing Board* 1983 2 ALL<sup>ER</sup> 770
5. *Turnkey Properties v Lusaka West Development Company Ltd., B.S.K. Chiti (Sued as Receiver), and Zambia State Insurance Corporation Ltd* 1984 ZR 85
6. *Hilary Bernard Mukosa v Michael Ronaldson* 1994 ZR 26
7. *Major Richard Kachingwe (suing in his capacity as National Secretary of the Movement for Multi-Party Democracy v Nevers Mumba* 2013 Vol 3 ZR 17

LEGISLATION REFERRED TO:

1. ***The High Court Rules Chapter 27 of the Laws of Zambia***
2. ***The Rules of the Supreme Court of England, 1965, 1999 Edition***
3. ***The Cooperative Societies Act No 20 of 1998***

OTHER WORKS REFERRED TO:

1. ***Halsbury's Laws of England 4<sup>th</sup> Edition Re-issue, Vol 6***

**1. INTRODUCTION**

1.1 This Ruling is on an application which was filed by William Franklin the Plaintiff herein, who commenced this action by Writ of Summons on 16<sup>th</sup> July, 2025, which is accompanied by a statement of claim and the other requisite documents.

1.2 The reliefs sought are:

- i. *An injunctive Order mandating that William Franklin and seven other former Board members of the Livestock Services Cooperative Society and their Counsel be given full access to inspect all the documents for the Livestock Services Cooperative Society which had been requested;*
- ii. *A declaratory Judgment that will Order that the 32<sup>nd</sup> AGM, its' agenda and all resolutions and conclusions emanating therefrom are null and void and are illegal;*
- iii. *An Order that the new by-laws and all amendments from the old by-laws are declared null and void and are against the rules and procedures laid down in the Co-operative Societies Act No 20 of 1998;*
- iv. *An Order that the Livestock Services Co-operative Society has breached its' statutory duty to maintain an active register of members, and thus, a further*

*mandatory order for the Livestock Services Cooperative Society to provide a verifiable and updated members' register to William Franklin and the other Plaintiffs.*

- v. An Order that the appointment of the 'non-voting directors' by the Board of the Livestock Services Cooperative Society is illegal and contravenes statute, and that their appointments are revoked with immediate effect;*
- vi. An Order that the appointment of Mr Andre Stucki to the Board of the Livestock Services Cooperative Society is illegal and contravenes statute;*
- vii. An interim injunctive order that will mandate the Chairperson of the Board to rescind the Notice of the 33<sup>rd</sup> AGM that is scheduled to be held on 17<sup>th</sup> July, 2025 at Taj Pamodzi Hotel in Lusaka until final determination of the matter.*
- viii. Costs;*
- ix. Any other relief that this Honourable Court shall deem fit.*

1.3 An ex-parte Order of injunction was granted on 16<sup>th</sup> July, 2025, restraining the Livestock Services Cooperative Society whether by itself, or by any of its' employees, members, servants, agents howsoever, otherwise from proceeding to hold the 33<sup>rd</sup> Annual General Meeting (AGM) which was scheduled to be held on 17<sup>th</sup> July, 2025, at the Taj Pamodzi Hotel in Lusaka, or on any day whatsoever, until full and final determination of the matter.

- 1.4 The Order of injunction further directed the Livestock Services Cooperative Society to allow William Franklin and his Counsel to inspect its' records within three (3) days from the date of the order.
- 1.5 An affidavit in opposition and a List of Authorities and Skeleton Arguments in opposition to the application were filed on 7<sup>th</sup> August, 2025.
- 1.6 William Franklin filed an affidavit in reply on 20<sup>th</sup> August, 2025.
- 1.7 It is also noteworthy that on 18<sup>th</sup> July, 2025, the Livestock Services Cooperative Society applied to discharge the Order of injunction ex-parte. I directed that the said application be heard inter-partes on 21<sup>st</sup> August, 2025.
- 1.8 Then thereafter, on 23<sup>rd</sup> July, 2025, the Livestock Services Cooperative Society filed an ex-parte application, to clarify the order of injunction pursuant to **Order 3 Rule 2 of the High Court Rules Chapter 27 of the Laws of Zambia** and the inherent jurisdiction of the Court.
- 1.9 An affidavit in opposition to the application to clarify the Order of injunction together with a List of Authorities and Skeleton Arguments in opposition were filed on 25<sup>th</sup> July, 2025.
- 1.10 In a Ruling dated 29<sup>th</sup> August, 2025, I directed that all the applications would be heard interpartes.

## **2. SUBMISSIONS AT THE HEARING**

- 2.1 The parties filed a Consent Order on 21<sup>st</sup> October, 2025 in which they waived their right to physical appearance at the

hearings of the applications for the Order of injunction and to discharge the said Order of injunction.

2.2 They further consented that this Court determines the application based on the documents that had been filed.

### **3. DECISION OF THIS COURT**

3.1 I have considered the applications. The application for an Order of injunction was filed pursuant to **Order 27 Rule 4 of the High Court Rules Chapter 27 of the Laws of Zambia.**

3.2 That Order provides as follows:

***“4. 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 wrongful act complained of, or the committal of any 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 may be 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 seem reasonable and just:***

***Provided that any order for an injunction may be discharged, varied or set aside by the Court or a Judge, on application made thereto by any party dissatisfied with such order.”***

- 3.3 William John Franklin in deposing to the affidavit which was filed in support of the application, stated that he is a registered member of the Livestock Services Cooperative Society (hereinafter called the Society) having been duly admitted under the Society's By-Laws.
- 3.4 It was further his averment, that he had previously served as Chairperson of the Society during which period he became familiar with the governance and procedural requirements that are prescribed by the Society's By-Laws and the law that is applicable to the Society.
- 3.5 William John Franklin also deposed, that he was initially informed by the Society's management that the 33<sup>rd</sup> Annual General Meeting (AGM) would take place on 26<sup>th</sup> November, 2024 premised on resolutions and actions which emanated from 32<sup>nd</sup> AGM which was held on 23<sup>rd</sup> November, 2023 at the Taj Pamodzi Hotel.
- 3.6 He exhibited as 'WJF1', the notice for the 33<sup>rd</sup> AGM. William John Franklin stated that the said AGM did not take off on 26<sup>th</sup> November, 2024, as there was an order of injunction that was obtained, which order was vacated by the Ruling dated 26<sup>th</sup> March, 2025; and was exhibited as 'WJF2', due to a procedural technicality in the matter.

- 3.7 William John Franklin stated that since the discharge of the order of injunction he had been diligently attempting to meaningfully engage with the Society to resolve the matter. It was his averment that during those discussions, the Society on 24<sup>th</sup> June, 2025, issued another notice for the 33<sup>rd</sup> AGM which was scheduled for 17<sup>th</sup> July, 2025, as shown on the notice which was exhibited as 'WJF3'.
- 3.8 He deposed that as pleaded in the statement of claim, the 32<sup>nd</sup> AGM was marred with several procedural irregularities which rendered its' resolutions and decisions null and void.
- 3.9 William John Franklin stated that those irregularities are material to the governance of the Society, and they had a direct bearing on the validity of the upcoming 33<sup>rd</sup> AGM.
- 3.10 He stated that prior to the 32<sup>nd</sup> AGM, the Society operated under its' preceding by laws which outlined specific requirements for member eligibility to attend and vote at AGMs. The averment was that Clause 6 stipulated that only registered members who had the requisite membership forms were eligible to vote, and exhibited as 'WJF4' was a copy of the By-Laws.
- 3.11 However, despite the By-Laws, the Society permitted individuals who were not duly registered, as well as proxies to attend and vote at the 32<sup>nd</sup> AGM.
- 3.12 On other irregularities, William John Franklin deposed that the Society violated Clause 37 of its' By-Laws, by failing to include mandatory agenda items, such as consideration of

the Board's Report and the Auditor's Report, as evidenced by the agenda for the 32<sup>nd</sup> AGM which was exhibited as 'WJF5'.

- 3.13 He went on to state that during the 32<sup>nd</sup> AGM, the Society adopted entirely new By-Laws to replace the old ones, which were exhibited as 'WJF6', and which he stated were contrary to the provisions of the law.
- 3.14 It was William John Franklin's averment, that the Society's continued reliance on the resolutions of the 32<sup>nd</sup> AGM to convene the 33<sup>rd</sup> AGM, had created immediate and significant risk that further unlawful actions would ensue, which would perpetrate governance irregularities and procedural breaches which had been committed.
- 3.15 Relying on the correspondence which was exhibited as 'WJF7', William John Franklin stated that himself and other members had requested the Society to convene a special meeting to address the issues, but the requests had gone ignored.
- 3.16 William John Franklin deposed that he received the Notice for the 33<sup>rd</sup> AGM which was scheduled for 17<sup>th</sup> July, 2025 on 24<sup>th</sup> June, 2025 through email. He stated that the said notice did not conform with Clause 50 of the By-Laws, which prescribes what a notice should contain, such as the election of the Committees of the Society, the business to be laid before the AGM by the Board, among others.
- 3.17 It was stated that the absence of a concise agenda for the AGM deprived the members of the opportunity to review and prepare for the meeting which would result in the Society's

failure to address the issues that were raised in the 32<sup>nd</sup> AGM.

- 3.18 Further averment was made, that if the 33<sup>rd</sup> AGM was allowed to proceed, William John Franklin and other members of the Society would suffer irreparable harm, as any resolutions that would be passed at the meeting would affect the governance, policies and operations of the Society, and which would potentially entrench unlawful practices and resolutions.
- 3.19 Exhibited as 'WJF8', were copies of the complaints that had been raised with regard to the governance of the Society.
- 3.20 It was also stated that on 11<sup>th</sup> July, 2025, a meeting was held at the Society's premises, which was attended by William John Franklin, as well as the Society's representatives Mr Renei Lawrence, John Clayton and Cornelius Chanda.
- 3.21 William John Franklin deposed that during that meeting, John Clayton and Renei Lawrence refused his request to physically inspect the documents insisting that the prescribed fee had to be paid as a condition for Counsel's attendance.
- 3.22 In the List of Authorities and Skeleton Arguments which were filed in support of the application, William John Franklin relying on the case of ***American Cynamid v Ethicon Limited*** <sup>(1)</sup> stated that he was entitled to an order of injunction.

- 3.23 It was argued that there is a serious question to be tried in this matter, as guided by the Supreme Court in the case of ***Shell and BP Zambia Limited v Conidaris and others*** <sup>(2)</sup>.
- 3.24 This it was argued, was premised on the fact that the Society intended to hold the 33<sup>rd</sup> AGM anchored on resolutions which were made at 32<sup>nd</sup> AGM, where voting was allowed by proxy and secondly by the voting in of Non-voting directors, and without the verification and eligibility of various members who were present at the 32<sup>nd</sup> AGM who voted.
- 3.25 Other irregularities that were cited in connection with the 32<sup>nd</sup> AGM, was the failure to have the Board's and Auditors reports, total replacement of the By-Laws and failure of the Board to convene a Special General Meeting after all the issues raised were brought to its' attention, in contravention of the Society's By-Laws and the ***Cooperative Societies Act No 20 of 1998***.
- 3.26 Further authority was sought from the case of ***Hilary Bernard Mukosa v Michael Ronaldson*** <sup>(6)</sup>, which case reiterated that an applicant for an order of injunction must demonstrate a good and arguable claim which they seek to protect.
- 3.27 On the inadequacy of damages and the risk of irreparable harm, William John Franklin relied on the decision in the case of ***Shell and BP Zambia Limited v Conidaris and others*** <sup>(2)</sup> stating that he would suffer irreparable harm and not mere inconvenience, if the order of injunction was not granted.

- 3.28 He added that this was further because he had been denied access of the right to be heard on the irregularities that stemmed from the 32<sup>nd</sup> AGM before the 33<sup>rd</sup> AGM was held.
- 3.29 On the balance of convenience, the argument was that this fell in favour of William John Franklin, as maintaining the state of affairs through an order of injunction would minimize the risk of injustice.
- 3.30 Thus, if the order of injunction were to be refused and the Society proceeded to hold the 33<sup>rd</sup> AGM, and William John Franklin and the others at trial succeed on the claims that the 32<sup>nd</sup> AGM was illegal, null and void, correction would be out of reach and farfetched.
- 3.31 It was argued that conversely, if the order of injunction were to be granted, and the Society was later found to be in the right, it could be compensated in damages for the delay. Thus, the order of injunction should be granted to preserve the status quo, being the restraining of the holding of the 33<sup>rd</sup> AGM.
- 3.32 William John Franklin reiterated his readiness to abide by any undertaking as to damages, should it be found that the injunction was wrongly granted.
- 3.33 He added that he is an active farmer and an active member of the Society, as well as that he is financially responsible, and he would be able to pay damages should an order be made.
- 3.34 Rene Lourens in the affidavit in opposition deposed that based on the complaints that William John Franklin made,

the Registrar of Cooperative Societies conducted an extensive investigation into the Society's 32<sup>nd</sup> AGM which was held on 23<sup>rd</sup> November, 2023.

- 3.35 He also stated that the Registrar of Cooperative Societies on 22<sup>nd</sup> October, 2024, gave the Society instructions to act upon, and advised that the 33<sup>rd</sup> AGM could only proceed when the directives were complied with. He exhibited as 'RL1' a copy of the letter from the Registrar of Societies evidencing the same.
- 3.36 In still deposing, Rene Lourens stated that Notice was given for the 33<sup>rd</sup> AGM, which was to be held on 17<sup>th</sup> July, 2025 after the Registrar of Cooperative Societies was satisfied that the Society had complied with all the directives.
- 3.37 Further averment was made, that the old By-Laws which William John Franklin claimed were breached did not in Clauses 6 to 8 prohibit the presence of authorised representatives for juristic persons. He stated that the said By-Laws, which were exhibited as 'RL2', in Clause 91, allowed for authorized representatives.
- 3.38 In still deposing, Rene Lourens stated that the Board Report which was under the heading 'Chairman's Report' and the 'Auditors Report' which was under Presentation and Adoption of the Annual Financial Statements, were on the agenda for the 32<sup>nd</sup> AGM as clearly indicated in the minutes of the draft 32<sup>nd</sup> AGM which were exhibited as 'RL3'.

- 3.39 He added that the agenda was unanimously adopted by the members who included William John Franklin, who was present before the 32<sup>nd</sup> AGM commenced.
- 3.40 Rene Lourens also deposed that he had been advised by his advocates, which advise he verily believed to be true, that an ex-parte order of injunction should not be granted as the rules of discovery provided for inspection, and the injunction was not an appropriate mode to seek inspection of documents.
- 3.41 His averment was that the Society would rely on the application to discharge the order of injunction which was filed into Court on 18<sup>th</sup> July, 2025, as well as the application seeking clarification of the terms of the order of injunction which was filed on 23<sup>rd</sup> July, 2025.
- 3.42 Rene Lourens deposed that William John Franklin failed to disclose material facts and the order of injunction should be discharged.
- 3.43 It was also stated that the By-Laws and the **Cooperative Societies Act No 20 of 1998** allow for amendment and replacement of the By-Laws, and that the By-Laws which were from 1991 were premised on the **Repealed Societies Act of 1970**. Therefore, they were incompatible with the **Cooperative Societies Act No 20 of 1998**, which necessitated the Registrar of Cooperative Societies to demand that the said By-Laws be revised.
- 3.44 Further in deposing, Rene Lourens stated that the Registrar of Cooperative Societies and officers from his office were

present at the 32<sup>nd</sup> AGM, to ensure that there was compliance with the law, and that his office approved and stamped the new By-Laws for the Society, which were exhibited as 'RL4'.

- 3.45 Other averments that were made, were that William John Franklin did not in line with Clauses 35-37 of the By-Laws request for a Special General Meeting.
- 3.46 Rene Lourens also averred that the Registrar of Cooperative Societies had written to the Society advising that the 33<sup>rd</sup> AGM should proceed as it was the rightful forum for William John Franklin to air his grievances, with a copy of the said letter from the Registrar of Cooperative Societies being exhibited as 'RL5'.
- 3.47 He stated that the Society is the largest agricultural cooperative in the country, which services 200, 000 customers annually. Thus, it is key to the agricultural sector and failure to hold the AGM where the accounts would be approved would result in serious consequences, as the same were required to be submitted to the Zambia Revenue Authority (ZRA) in order for the Society to be tax compliant.
- 3.48 The arguments as advanced in the List of Authorities and Skeleton Arguments in opposition, reiterated that before an order of injunction can be granted, the right to relief must be clear. The case of ***Harton Ndove v National Education Company Limited*** <sup>(3)</sup> was relied on as authority in that regard.

- 3.49 It was argued that the 32<sup>nd</sup> AGM was held with the blessings of the Registrar of Cooperative Societies and that replacement of the By-Laws was at the instructions of the Registrar of Cooperative Societies, as the same were inconsistent with the **Cooperative Societies Act of 1998**.
- 3.50 Further argument was made, that the 33<sup>rd</sup> AGM was the correct forum for William John Franklin to air his grievances.
- 3.51 Therefore, William John Franklin had failed to demonstrate that there is a serious question to be tried.
- 3.52 Citing the case of **Shell and BP Zambia Limited v Conidaris and others** <sup>(2)</sup> it was argued that William John Franklin's contention was that there were procedural irregularities and illegalities. Therefore, no irreparable injury would be occasioned to William John Franklin if the order of injunction were to be denied, as what he claimed could be granted by declaratory orders and damages.
- 3.53 It was further argued that William John Franklin had alternative remedies in the Society's By-Laws, such as the right to petition the holding of a Special General Meeting of the Society and having his grievances included in the Agenda for the next AGM.
- 3.54 Also argued, was that William John Franklin had the right to propose amendments to the By-Laws which could be voted on by the general membership, whereas the Society had no alternatives if the AGM was enjoined.

3.55 Premised on that, the argument was that the balance of convenience lay in favour of the Society, as it being the largest agricultural cooperative in the country that services 200, 000 customers annually, failing to hold the AGM at which its' accounts could be approved, would have serious consequences in the Society being compliant with its' tax obligations.

3.56 The case of ***Turnkey Properties v Lusaka West Development Company Ltd., B.S.K. Chiti (Sued as Receiver), and Zambia State Insurance Corporation Ltd*** <sup>(5)</sup> was cited as having held that:

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

3.57 Argument was also made, that it had been almost two years since the 32<sup>nd</sup> AGM was held on 23<sup>rd</sup> November, 2023 and William John Franklin had not demonstrated any damages or prejudice that he had suffered. It was added that the By-Laws of the Society did not permit the distribution of dividends or patronage bonuses, and neither did the directors receive any remuneration.

3.58 That to the contrary, the Society faced structural damage due to the non-compliance with its' statutory obligations to the ZRA and delays in servicing its' 200, 000 members.

3.59 Therefore, the contention was that William John Franklin was using the order of injunction to create new conditions

favourable to himself and the seven others on whose behalf he had sued.

- 3.60 On the status quo, reference was made to the case of **Garden Cottage Foods Limited v Milk Marketing Board** <sup>(4)</sup> where the same was explained as follows:

***“The status quo is the existing state of affairs; but since states of affairs do not remain static this raises the query: existing when? In my opinion, the relevant status quo to which reference was made in the American Cyanamid case is the state of affairs existing during the period immediately preceding the issue of the writ claiming the permanent injunction or, if there be unreasonably delay between the issue of the writ and the motion for an interlocutory injunction, the period immediately preceding the motion.”***

- 3.61 It was argued that maintaining the status quo in this matter was holding the 33<sup>rd</sup> AGM where William John Franklin could air his grievances, and they would be addressed.

- 3.62 Other argument was made, that the relief that is sought in the order of injunction could be settled by inspection as provided in **Order 29/8A/10 of the Rules of the Supreme Court of England** stating that it provides as follows:

***“Inspection of a document may be ordered when what is in issue is the form of the document or by whom it is made (e.g. whether or not it is a forgery. But where what is in question is the content of the***

***document, an application for inspection is governed by the rules relating to discovery of documents.”***

**DECISION**

3.63 The principles that govern the granting orders of injunction were laid down in the case of ***American Cyanamid v Ethicon Limited*** <sup>(1)</sup>.

3.64 They can be summarised as follows:

- i. *Whether there is a serious question to be tried?*
- ii. *If that is answered in the affirmative, whether damages would be an adequate remedy?*
- iii. *If damages would be an adequate remedy, the order of injunction should not be granted.*
- iv. *If damages would not suffice, where does the balance of convenience lie?*

3.65 The Court in that matter stated the following as regards the object of an order of injunction:

***“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. The court must weigh one need against another and determine where 'the balance of convenience' lies."***

- 3.66 In this matter, a perusal of the Writ of Summons and statement of claim, as well as the defence, reveal that the main claim by William John Franklin is that he seeks a declaratory Order that the 32<sup>nd</sup> AGM, its' agenda, resolutions and conclusions emanating therefrom were null and void and illegal.
- 3.67 He further seeks a declaration that the By-Laws and all the amendments from the old By-Laws are null and void and against the procedures which are laid down in the ***Cooperative Societies Act No 20 of 1998***.
- 3.68 William John Franklin further seeks an order that the Society breached its' statutory obligation to maintain a register of members, and to provide a verifiable and updated list of members to William John Franklin.
- 3.69 The further reliefs that are sought, are that the appointment of the Non-Voting Directors by the Board of the Society was illegal and contravened statute, and that the said appointments should be revoked.
- 3.70 William John Franklin further claims that the appointment of Mr Andre Stucki to the Board of the Society was illegal.

- 3.71 The defence by and large, denies that the actions which were taken at the 32<sup>nd</sup> AGM were illegal null and void. The defence further alleges that membership of the Society was listed according to the By-Laws of the Society, and that the Membership Register was prepared in 2012/2013 when William John Franklin and others were members of the Board, and they resolved to close off any new membership applications. Thus, the 2023 AGM was held on the basis of that membership register.
- 3.72 The defence further alleges that the old By-Laws did not require each member to be issued with or to produce a membership card at the AGM.
- 3.73 It has also been contended in defence, that the new By-Laws were approved by the Registrar of Cooperative Societies and that the old By-Laws provided for the coopting of new members when vacancies in the board fell until the next AGM.
- 3.74 Further, that under Clause 45 of the old By-laws, there was provision to coopt special members for purposes of giving advise to the Board during meetings, which persons would have no voting rights, and they would not necessarily be members of the Society.
- 3.75 It is also stated that while the Board was authorized to appoint non-voting directors as contemplated in Clause 44 of the old By-Laws, none were appointed at the 32<sup>nd</sup> AGM.
- 3.76 The Society denies having failed to hold a Special General Meeting, stating that William John Franklin failed to meet

the requirements for requisitioning a Special General Meeting, as provided in Clause 37 of the By-Laws, and that he had never made any written request for a Special General Meeting in the prescribed manner.

- 3.77 The defence is also that the Society has always been ready to avail its' records for inspection to William John Franklin in accordance with the requirements of the law.
- 3.78 What these averments reveal, is two competing positions in respect of the reliefs that William John Franklin claims in this matter. That ordinarily raises a serious question to be tried.
- 3.79 The Society has however argued that William John Franklin did not requisition for a Special General Meeting in line with Clause 37 of the old By-Laws, so that he could raise the issues that he seeks to raise in this matter. Further William John Franklin did not request for inclusion in the agenda for the 33<sup>rd</sup> AGM, the issues that he seeks to raise in this matter.
- 3.80 The defence is also that the Society has been willing to provide its' documents for inspection in line with the law in the **Cooperative Societies Act No 20 of 1998**.
- 3.81 It is trite that Cooperative Society like the Livestock Services Cooperative Society, the Defendant herein in this matter, is like a club. The Society that is before Court is governed by its' By-Laws and the **Cooperative Societies Act No 20 of 1998**.
- 3.82 **Halsbury's Laws of England 4<sup>th</sup> Edition Re-issue, Vol 6 in paragraph 201 at page 56** defines a *club* as:

***“A club, except a proprietary club or an investment club, may be defined as a society of persons associated together, not for purposes of trade, but for social reasons, the promotion of politics, sport, art, science or literature, or for any other lawful purpose, but trading activities will not destroy the nature of a club, if there are merely incidental to the club’s purposes.”***

3.83 Further, ***paragraph 217 of the said Halsbury’s Laws of England, 4<sup>th</sup> Edition Re-Issue at page 63*** states that:

***“Every club is governed by rules, which generally specify the purposes for which it is constituted, and make provision as to the admission of members, the payment of entrance fees and subscription, the resignation and expulsion of members, the management of the affairs of the club, ordinary and extraordinary general meetings of the members, alteration of the rules and making of new rules....”***

3.84 William John Franklin produced the old By-Laws for the Society as exhibit ‘WJF4-6 (o)’ and the new By-Laws as ‘WJF6a-8c’.

3.85 Clause 47 of the Society’s new By-Laws provides that:

***“An SGM with the requisite notice period may be called at any time by the Board.”***

3.86 Then Clauses 103 and 104 of the said By-Laws state that:

***“103 Any member desiring the inclusion of a motion on the agenda of the AGM shall:***

- a) Give at least 14 days written notice thereof to the Board before the expiration of the second month after the end of the financial year end;***
- b) Sign such written request supported by the signatures of at least 15 other members of the Society who must all attend and be present at the said AGM;***
- c) Specify the nature and purpose of the motion.***

***104. In the event that a member desires the calling of a SGM of the society, he/she shall:***

- a) Present to the Board a written petition signed by at least 25% of the members of the Society;***
- b) Specify the Agenda of the SGM;***
- c) Detail the nature and purpose of the Petition, which shall include grounds for the urgency of the matter that could not await the next AGM of the Society;***
- d) Upon receipt of the written notice to convene the SGM, the Chairperson of the Board shall place the matter on the agenda of the next Board meeting.”***

3.87 William John Franklin in paragraph 15 of the affidavit which he filed in support of the application, deposed that himself and other members of the Society had on multiple occasions requested the Society to convene a Special General Meeting

to address the issues raised, as shown on exhibit 'WJF7'. However, those requests had been ignored.

- 3.88 A perusal of 'WJF7a-c' shows that it is an email that William John Franklin wrote to Faizel and the Board Members on 25<sup>th</sup> November, 2024. At the end of the email, William John Franklin put his name.
- 3.89 The said email indicates that William John Franklin had made a request for an informal discussion but they had insisted on a Special General Meeting with an agenda and a panel of attendees.
- 3.90 William John Franklin further contended that he had complied with the same, but the Board and Faizel had switched goal posts.
- 3.91 He then went further to seek clarity on proxy votes, fraudulent proxy requests, resignation, traction, minutes of the October 5 2023 meeting, delay on submissions of the by-laws, membership process issues, board member eligibility, conflict of interest of Mr Stucki, Mr Kapadia's removal, Mr Becket's departure, Mr Louwrens appointment, and the police summons for the former GM.
- 3.92 The email does not state that it was a request to include a motion in the agenda for the AGM or indeed that it was a request to call for a Special General Meeting of the Society. The requisition for a Special General Meeting that was previously made as indicated in the email was not attached to the affidavit which was filed in support of the application.

- 3.93 Thus, I am unable to establish whether it complied with the stipulations in Clause 104 of the By-Laws.
- 3.94 It will further be noted that exhibit 'WJF8a-c' is an email that William John Franklin wrote to Faizel Ismail on 1<sup>st</sup> November, 2024 stating that a Special Board Meeting (SBM) could not be convened to go over issues which had already been referred by Faizel Ismail's team to the authorities. He added that if the team wished to redo the complaint, albeit with the Board this time, it would call into question the competency of the Registrar and the integrity of his findings.
- 3.95 William John Franklin in that email, went on to further state that the Board considered the items that were investigated to have been filed away and labelled as res judicata, and they had to respect the outcome.
- 3.96 Thereafter, he proceeded to list his grievances over the agenda items 2, 3, 4 and 7, and noted that if there were any issues that Faizel Ismail's team wished to discuss, a Special Board Meeting would surely be considered, and that the Board considered the Special Board Meeting pointless at that stage, as the proposed agenda items did not warrant it.
- 3.97 There is another earlier email on that document, which is dated 28<sup>th</sup> October, 2024, which William John Franklin wrote to Faizel acknowledging the letter dated 16<sup>th</sup> September, and thanking Faizel for agreeing to facilitate a Special Board Meeting.
- 3.98 William John Franklin indicated that once a proposed date was set, they would circulate the date to potential attendees

to ascertain their availability, and that he would notify Faizel of the final list.

- 3.99 He also stated that there was a list of attendees who had expressed interest in attending, who were named as Don Stacey, Graham Rae, His Royal Highness Professor King, Neville Pinkey, Nick Beckett, Don Burton, Chris Clubb, Blair Mcleod, and William Franklin. The proposed agenda was also stated.
- 3.100 Clause 70 of the By-Laws provides that Board Meetings of the Society shall held at least four times during the course of the year.
- 3.101 In the case of ***Major Richard Kachingwe (suing in his capacity as National Secretary of the Movement for Multi-Party Democracy v Nevers Mumba*** <sup>(7)</sup> the Court held that the role of the Court in relation to clubs, is restricted to inquiring into the legality of the decisions that are made in relation to a member's rights, or to ensure that the rules themselves comply with the tenets of natural justice, and that decisions are made without malice.
- 3.102 Going by the above, and in consideration of the basis upon which the application for an order of injunction has been made in this matter, and the provisions of the By-Laws that govern how members can requisition for inclusion of agendas at the AGM or for the calling of Special General Meetings, and William John Franklin as a member of the Society, being bound by those provisions, this is not a proper

case where the ex-parte order of injunction pending determination of the matter should be maintained.

3.103 Further, **Section 21 of the Cooperative Societies Act No 20 of 1998** provides that:

***“21. A co-operative society shall keep a copy of its regulations, by-laws and list of members open to inspection by any member free of charge or any member of the public on payment of a prescribed fee, at all reasonable times, at the registered office of the co-operative society.”***

3.104 Clause 33 of the By-Laws provides inter alia that:

***“Every member shall have the right to inspect at all reasonable times, a copy of the Society’s By-Laws, the Audited financial statements and the Members’ List at no charge and the right to use the services of the Society as provided for these By-Laws.”***

3.105 Then Clause 36 of the said By-Laws states that:

***“Every member of the Society may inspect the records of the Society provided such inspection is done in accordance with Section 59 (2) of the Act.”***

3.106 **Section 59 (2) of the Cooperative Societies Act** states that:

***“(2) The records of the co-operative society shall be open for inspection, at the registered office of the co-operative society, by any member or delegate during office hours; except that no person who is***

***not an officer of the co-operative society, or who is not specifically authorised by a resolution in that behalf of a general meeting, shall have the right to inspect the accounts of any other member without the written consent of that member.”***

- 3.107 Therefore, William John Franklin is at liberty, as provided in ***Section 21 of the Cooperative Societies Act No 20 of 1998***, to inspect the regulations, by-laws and the list of the members of the Society free of charge, being a member. If he wishes to engage a third party that is not a member to inspect the documents on his behalf, that third party has to pay the prescribed fees.
- 3.108 Further in line with Clause 33 of the By-Laws, William John Franklin has a right to inspect the Society’s By-Laws, the Audited financial statements and the Members’ List at no charge, and he also has the right to use the services of the Society as provided for the By-Laws.
- 3.109 It will be noted that the Society relied on the provisions of ***Order 29/8A/10 of the Rules of the Supreme Court of England*** in arguing that William John Franklin could have invoked that provision to request to inspect the Societies documents.
- 3.110 However, that provision falls under the head ‘*Applications for interim relief under Section 25 (1) of the Civil Jurisdiction and Judgments Act 1982.*’

3.111 That Act is not applicable in this jurisdiction, as it has not been extended to apply to Zambia by virtue of ***The British Acts Extension Act Chapter 10 of the Laws of Zambia.***

3.112 In the affidavit which was filed in support of the application to clarify the Order of injunction, Rene Lourens deposed that as shown by exhibit 'RL4', the Society had availed William John Franklin the Members List and the By-Laws.

3.113 The contention was that the ex-parte Order of injunction as regards the availing of the Society's records was vague and needed clarity.

3.114 I have pointed out what records, William John Franklin can as member of the Society inspect, in line with ***Section 21 of the Cooperative Societies Act No 20 of 1998*** and the ***By-Laws.***

3.115 If he has not been availed any of the documents which are allowed to be inspected by virtue of the two provisions, then he shall be allowed to forthwith inspect the said documents. William John Franklin shall be at liberty to commence proceedings against the Society should there be disobedience of the order.

#### **4. CONCLUSION**

4.1 Having found that the ex-parte Order of injunction should not be maintained, I accordingly discharge the order of injunction that was granted ex-parte on 16<sup>th</sup> July, 2025, save for the provision relating to inspection of documents as has been clarified by this Ruling.

- 4.2 William John Franklin having made an undertaking as to damages, and as I have found that this is not a fit and proper case where the Order of injunction should be maintained, he shall pay any damages that may have been incurred by the Society by virtue of the ex-parte order of injunction having been granted.
- 4.3 The Society having entered appearance and filed the defence and the other documents, the matter shall come up for orders for directions on 17<sup>th</sup> November 2025 at 11:30 hours. Costs shall be in the cause.

**DATED AT LUSAKA THE 5<sup>th</sup> DAY OF NOVEMBER, 2025**

