

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

2025/HP/1382

BETWEEN:

STEVAN VINCENT VARNELL

AND

THANDIWE MARTHA KAMBUZI**PLAINTIFF****DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 26th
DAY OF NOVEMBER, 2025**

For the Plaintiff : Mr James Tembo, Messrs August Hill & Associates

For the Defendant : Captain F.B. Nanguzgambo, Messrs F.B. Nanguzgambo and Associates

R U L I N G

CASES REFERRED TO:

1. *Standard Bank Limited v Brocks* 1972 ZR 306
2. *Shell & B.P. Zambia Limited v Conidaris and others* 1975 ZR 174
3. *Harton Ndove v National Educational Company of Zambia Limited* 1980 ZR 184
4. *Hina Furnishing Lusaka Ltd v Mwaiseni Properties Ltd* 1983 ZR 40
5. *ZIMCO Properties Limited v LAPCO Limited* 1988-198 ZR 72
6. *Whidden Kanungwe v Zambia Sugar Plc* SCZ Appeal No 192 of 2002
7. *National Airports Corporation Limited v Mines Air Services (T/A Zambia Airways* 2011 Vol 2 ZR
8. *Akapelwa (sued as Induna Inete) & others v Nyumbu* SCZ Appeal No 4 of 2015
9. *Natural Valley Limited v Fairly Bottling Limited* SCZ Appeal No 16 of 2016
10. *Wang Qinghai and another v Kingphar Company (Zambia) Limited and another* 2020/HP/244

LEGISLATION REFERRED TO:

1. *The Constitution of Zambia Chapter 1 of the Laws of Zambia*
2. *The High Court Rules Chapter 27 of the Laws of Zambia*

3. The Rules of the Supreme Court of England, 1965, 1999 Edition

1. INTRODUCTION

1.1 Stevan Vincent Varnell, the Plaintiff herein, commenced these proceedings on 25th September, 2025 against Thandiwe Martha Kambuzi seeking:

- i. A declaration that Thandiwe Martha Kambuzi has been unjustly enriched;*
- ii. Restitution of the sum of USD190, 746.92 or such other sums as the Court may deem just, representing monies that were obtained by Thandiwe Martha Kambuzi from Stevan Vincent Varnell by fraudulent misrepresentation and unjust enrichment;*
- iii. Special damages being interest, loan charges and fees which were incurred as a direct result of Thandiwe Martha Kambuzi's fraudulent misrepresentation;*
- iv. An Order attaching movable property and restraining Thandiwe Martha Kambuzi whether by herself, her servants or agents or otherwise howsoever from disposing of, transferring, or otherwise dealing with any assets in her name and control pending the conclusion of these proceedings;*
- v. Interest;*
- vi. Any further relief that the Court may deem fit; and*
- vii. Costs of and incidental to these proceedings.*

1.2 On the date that the matter was commenced, Stevan Vincent Varnell also filed an ex-parte application for an order of interim attachment of property and an order of injunction,

pursuant to ***Order XXVI Rule 1 and Order XXVII Rule 1 of the High Court Rules Chapter 27 of the Laws of Zambia*** as read with ***Order 29 Rule 1 (1) of the Rules of the Supreme Court of England, 1965, 1999 Edition.***

- 1.3 The application was supported by an affidavit and a List of Authorities and Skeleton Arguments in support. I directed that the application be heard interpartes.
- 1.4 In opposing the application, Thandiwe Martha Kambuzi filed an affidavit in opposition and a List of Authorities and Skeleton Arguments in opposition on 3rd November, 2025.
- 1.5 An affidavit in reply and a List of Authorities and Skeleton Arguments in reply were filed on 4th November, 2025.

2. SUBMISSIONS AT THE HEARING

SUBMISSIONS BY COUNSEL FOR STEVAN VINCENT VARNELL

- 2.1 Counsel in submission, stated that they placed reliance on the affidavit which was filed in support of the application together with the List of Authorities and Skeleton Arguments in support. He also relied on the affidavit in reply together with the List of Authorities and Skeleton Arguments in reply.
- 2.2 By way of augmenting, Counsel stated that Stevan Vincent Varnell had demonstrated that the application should be granted. He also stated that Thandiwe Martha Kambuzi had failed to oppose the facts as alleged in the affidavit which was filed in support of the application.
- 2.3 It was further submitted that Thandiwe Martha Kambuzi had derailed the Court from the real issues that were to be

determined, being whether she was unjustly enriched and whether the properties should be preserved pending determination of the matter by the Court.

2.4 Counsel added that Thandiwe Martha Kambuzi had not demonstrated why the relief should not be granted, but she had told a story of a sexual relationship between herself and Stevan Vincent Varnell, and she had avoided the issues of fraud and unjust enrichment.

2.5 It was accordingly Counsel's prayer that the application be granted as if it were not, the trial would be otiose.

RESPONSE BY COUNSEL FOR THANDIWE MARTHA KAMBUZI

2.6 Counsel in response, submitted that they relied on the affidavit in opposition together with the List of Authorities and Skeleton Arguments in opposition. It was stated that it had been demonstrated that the applications should not be granted as they were not line with the principles of **Order 26 of the High Court Act**.

REPLY BY COUNSEL FOR STEVAN VINCENT VARNELL

2.7 There was no reply.

3. DECISION BY THIS COURT

3.1 I have considered the applications.

APPLICATION FOR ATTACHMENT OF PROPERTY

3.2 I will start with the application for an order for the attachment of property. It was made pursuant to **Order 26 of the High Court Rules, Chapter 27 of the Laws of Zambia**, whose provisions are as follows:

“1. If the defendant, in any suit for an amount or value of fifty thousand kwacha or upwards, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property, or any part thereof, or to remove any such property from the jurisdiction, the plaintiff may apply to the Court or a Judge, either at the time of the institution of the suit, or at any time thereafter until final judgment, to call upon the defendant to furnish sufficient security to fulfil any decree that may be made against him in the suit, and, on his failing to give such security, to direct that any property, movable or immovable, belonging to the defendant, shall be attached until the further order of the Court or a Judge.”

- 3.3 In deposing to the affidavit which was filed in support of the application, Stevan Vincent Varnell stated that sometime between December 2022 and January, 2023, he met Thandiwe Martha Kambuzi who is a relative to his wife Denise Varnell in Lusaka, who made him understand that she required financial assistance for her education at Eden University.
- 3.4 He stated that he agreed to assist Thandiwe Martha Kambuzi financially on the understanding that he would be making a financial contribution of ZMW4, 500.00 monthly towards her education.

- 3.5 Also, in averring, Stevan Vincent Varnell stated that a romantic relationship developed between himself and Thandiwe Martha Kambuzi, and she led him to believe that he could marry her as his second wife under customary law.
- 3.6 He went on to state that from the time that he knew Thandiwe Martha Kambuzi to early 2025, she made fraudulent representations which led him to send around 83 Western Union Cash transfers totaling USD 191, 072.00, which were collectively exhibited as 'SV1'.
- 3.7 It was deposed that the monies were not transmitted in consequence of any romantic interest, but they were procured through a series of fraudulent misrepresentations, deceitful assurances and deliberate concealment, which were all calculated and intended at inducing Stevan Vincent Varnell into parting with substantial sums of money to Thandiwe Martha Kambuzi to his detriment.
- 3.8 The particulars of fraudulent misrepresentation were stated as:
- i. Thandiwe Martha Kambuzi making false claims about having tumours/lung cancer and requiring money for medical assistance. Stevan Vincent Varnell sent a total of approximately USD125, 000.00 as a result of the purported medical condition. Exhibited as 'SV2' were copies of the text message correspondence, in which Thandiwe Martha Kambuzi spoke of needing chemotherapy;

- ii. Contrary to the claims relating to Thandiwe Martha Kambuzi's near fatal medical condition, Stevan Vincent Varnell discovered through Thandiwe Martha Kambuzi's various social media accounts, including Facebook, Ticktok and Instagram that she portrayed a lavish lifestyle and an active life, which was inconsistent with her claims of having a near fatal condition. The various social media posts were collectively exhibited as 'SV3';
- iii. Thandiwe Martha Kambuzi lied about needing money for rural relocations which were associated with her medical school, as shown by correspondence which was exhibited as 'SV4'. To the contrary, her social media activity showed/shows daily activity which was inconsistent with her claims of being away on lengthy rural posting.
- iv. Thandiwe Martha Kambuzi on various occasions requested exorbitant amounts in the region of ZMW70,000.00 claiming that they were assessment fees which were required for school, as evidenced by exhibit 'VS5', the correspondence. It was not apparent that such figures were well beyond the sums any university in Zambia would charge for assessments.
- v. Thandiwe Martha Kambuzi made false claims that herself and her mother owed an unnamed individual money, and that Thandiwe Martha Kambuzi would go to jail if she did not have the money paid back. She

further falsely claimed that she would have a heart attack as a result of the situation. Exhibit 'VS6' was said to be the said correspondence;

- vi. Thandiwe Martha Kambuzi on several occasions knowingly lied and/or misrepresented facts to Stevan Vincent Varnell to induce him to send money to her. The lies included claims of assault, attempted rape, suicide, robberies or car jackings and unexpected assessment fees amongst others. Exhibit 'SV7' was the correspondence collectively. Stevan Vincent Varnell sent money to Thandiwe Martha Kambuzi on the basis of the false representations.

3.9 Stevan Vincent Varnell further deposed that contrary to Thandiwe Martha Kambuzi's false representations that she was unwell, and was in financial distress, Stevan Vincent Varnell discovered through her social media accounts (TikTok, Facebook, and Instagram) that she was instead living a lavish lifestyle, frequently posting photographs and videos of travel, expensive clothing and partying.

3.10 It was also his averment, that upon discovering that Thandiwe Martha Kambuzi had been scamming him through her social media accounts, Stevan Vincent Varnell reported the fraud to the Federal Bureau of Investigations (FBI), the Trade Commission and Western Union as shown by the reports which were exhibited as 'SV8'.

- 3.11 He deposed that Thandiwe Martha Kambuzi had unjustly enriched herself through the fraud, and she had acquired various assets and moveable property which included:
- i. Mercedes Benz C200-Registration Mark CAD 6276ZM
 - ii. Toyota Auris 9107-Registration Mark BAB 800; and
 - iii. Toyota Mark X – Registration number 6611 ZM.
- 3.12 The registration certificates for the said vehicles from the Road Transport and Safety Agency were collectively marked as ‘SV9’.
- 3.13 It was deposed that the value of the claim is USD190,746.92.
- 3.14 In the List of Authorities and Skeleton Arguments which were filed in support of the application, the law in **Order XXVI Rule 1 of the High Court Rules** was cited.
- 3.15 It was stated that the Court in the case of **Standard Bank Limited v Brocks** ⁽¹⁾ held that attachment can only issued where the Defendant is about to remove or dispose of the property with intent to obstruct or delay execution of any decree that may be passed against them.
- 3.16 Further argument was made, citing the case of **National Airports Corporation Limited v Mines Air Services (T/A Zambia Airways)** ⁽⁷⁾ that the burden is on the Plaintiff to demonstrate the Defendant’s intention.
- 3.17 It was also stated that Stevan Vincent Varnell was alive to the fact, that the Court in the case of **Wang Qinghai and another v Kingphar Company (Zambia) Limited and another** ⁽¹⁰⁾ stated that before an order for attachment of

property can be made, the Defendant must be given opportunity to furnish security.

- 3.18 In the affidavit in opposition, Thandiwe Martha Kambuzi deposed that she entered into an informal agreement with Stevan Vincent Varnell for him to be assisting her with ZMW9, 500.00 as school fees, and not ZMW4, 500.00 as alleged.
- 3.19 She agreed that a romantic relationship developed between herself and Stevan Vincent Varnell, and that Stevan Vincent Varnell proposed to marry her as a second wife under customary law. Thandiwe Martha Kambuzi stated that she refused the proposal, as Stevan Vincent Varnell is married to her aunt, and it is abominable in Zambia for an aunt and niece to be married to the same man.
- 3.20 In still averring, Thandiwe Martha Kambuzi deposed that being a third-year Medical student, her relationship with Stevan Vincent Varnell became disruptive, and she decided to pull out of the relationship, which made him furious and he commenced this action demanding return of all the monies in issue.
- 3.21 It was her averment, that it was a condition for money to be sent to her, for her to send nude videos and to be naked during the video calls, and for her to sometimes use sex toys that Stevan Vincent Varnell provided her.
- 3.22 Further in deposing, Thandiwe Martha Kambuzi stated that Stevan Vincent Varnell at one time, requested for Thandiwe Martha Kambuzi's best girlfriend Sibbo, to join the live video

call where Thandiwe Martha Kambuzi and Sibon were expected to act as lesbians, in order to satisfy Stevan Vincent Varnell's awkward sexual appetite.

- 3.23 Thandiwe Martha Kambuzi, denied that she made fraudulent representations in order for Stevan Vincent Varnell to send her the monies, stating that he did so voluntarily in his capacity as her boyfriend.
- 3.24 Thus, she denied that Stevan Vincent Varnell had been scammed as he sent her the monies after she satisfied the conditions precedent as stated above.
- 3.25 Further averment was made, that it was an assumption that Thandiwe Martha Kambuzi used the money that he sent her to buy the immovable property, and that there was no evidence to show that she purchased immovable property.
- 3.26 It was stated that it was also an assumption that Thandiwe Martha Kambuzi bought vehicles from the money that Stevan Vincent Varnell sent her. She stated that it was unconstitutional to subject a person to search without their consent.
- 3.27 Thandiwe Martha Kambuzi deposed that it was an assumption that she was about to dispose of the properties.
- 3.28 In the Skeleton Arguments and List of Authorities in opposition, Thandiwe Martha Kambuzi argued relying on the case of ***National Airports Corporation Limited v Mines Air Services (T/A Zambia Airways*** ⁽⁷⁾ which was also relied on by Stevan Vincent Varnell, that Stevan Vincent Varnell had not demonstrated that she threatened or had intent to

dispose of the assets or to obstruct/delay the execution of any Judgment.

- 3.29 It was also stated that Stevan Vincent Varnell had not prior to the application, requested Thandiwe Martha Kambuzi to provide security.
- 3.30 Further argument was made, that Stevan Vincent Varnell had not shown that after these proceedings were commenced, Thandiwe Martha Kambuzi had moved or disposed of the assets.
- 3.31 In the affidavit in reply, Stevan Vincent Varnell maintained that it was agreed that he would only be sending ZMW4, 500.00 a month towards Thandiwe Martha Kambuzi's school.
- 3.32 He stated that the amount was gradually increased as Thandiwe Martha Kambuzi made claims for additional expenses, which included increase in rent. Stevan Vincent Varnell stated that to maintain transparency and oversight of transfer of the funds, a WhatsApp Group was created on 26th March, 2023, whose membership was Stevan Vincent Varnell, his wife and Thandiwe Martha Kambuzi.
- 3.33 He deposed that Thandiwe Martha Kambuzi made it seem a possibility that he could marry her as a second wife, through the communications on WhatsApp.
- 3.34 Stevan Vincent Varnell stated that the relationship came to an end when he discovered that Thandiwe Martha Kambuzi's social posts were inconsistent with her repeated claims for urgent financial assistance. He added that Thandiwe Martha

Kambuzi posted numerous videos on Tiktok in which she was dancing and appeared energetic and healthy, contrary to the claims that she had lung cancer.

- 3.35 Further averment was made, that the posts showed that Thandiwe Martha Kambuzi was not in rural areas where she claimed to be doing her assessments.
- 3.36 It was stated that Thandiwe Martha Kambuzi at the outset of the relationship, repeatedly stated that she wanted to make Stevan Vincent Varnell happy, which established the mutual and intimate nature of their relationship rather than a transactional one.
- 3.37 Averment was made, that the tone and content of the messages did not support the claims as made by Thandiwe Martha Kambuzi.
- 3.38 Stevan Vincent Varnell denied having introduced the use of sex toys, stating that rather, Thandiwe Martha Kambuzi admitted owning one which was provided by her friend Sibon, which Thandiwe Martha Kambuzi stated that she had named Steve. Thus, the sexual interaction between Stevan Vincent Varnell and Thandiwe Martha Kambuzi was consensual and it was not a precondition for any financial assistance.
- 3.39 Stevan Vincent Varnell denied that Thandiwe Martha Kambuzi was ever requested to join any live video in which she engaged in sexual activity to satisfy his sexual appetite.
- 3.40 He deposed that there were over three hundred plus pages of documentary and video evidence, which showed the

scams which were perpetrated by Thandiwe Martha Kambuzi pursuant to which she was sent money.

- 3.41 Thus, based on the scams, it was reasonable for Stevan Vincent Varnell to assume that Thandiwe Martha Kambuzi used the funds that he sent her to acquire the various assets which included the vehicles, as the money was not applied for the purposes for which they were requested.
- 3.42 It was further deposed that the claims for constitutional protection did not aid Thandiwe Martha Kambuzi. Stevan Vincent Varnell stated that given that Thandiwe Martha Kambuzi had already misrepresented facts, there was real concern that she may dispose of the assets to frustrate Stevan Vincent Varnell recovering.
- 3.43 The List of Authorities and Skeleton Arguments in reply repeated the arguments as advanced in the List of Authorities and Skeleton Arguments which were filed in support of the application.
- 3.44 The law in **Section XXVI Rule 1 of the High Court Rules** has been seen above. The rest of the provisions in that Order are as follows:

“(2). The application shall contain a specification of the property required to be attached and the estimated value thereof, so far as the plaintiff can reasonably ascertain the same; and the plaintiff shall, at the time of making the application, declare that, to the best of his information and

belief, the defendant is about to dispose of or remove his property with such intent as aforesaid.

(3) If the Court or a Judge, after making such investigation as it or he may consider necessary, shall be satisfied that the defendant is about to dispose of or remove his property, with intent to obstruct or delay the execution of the decree, it shall be lawful for the Court or a Judge to order the defendant, within a time to be fixed by the Court or a Judge, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property, or the value of the same, or such portion thereof as may be sufficient to fulfil the decree, or to appear and show cause why he should not furnish security.

The Court or a Judge may also, in the order, direct the attachment, until further order, of the whole or any portion of the property specified in the application.

(4) If the defendant fails to show such cause, or to furnish the required security within the time fixed by the Court or a Judge, the Court or a Judge may direct that the property specified in the application, if not already attached, or such portion thereof as shall be sufficient to fulfil the decree, shall be attached until further order. If the

defendant show such cause, or furnish the required security, and the property specified in the application, or any portion of it, shall have been attached, the Court or a Judge shall order the attachment to be withdrawn.

(5) The attachment shall not affect the rights of persons not parties to the suit, and, in the event of any claim being preferred to the property attached before judgment, such claim shall be investigated in the manner prescribed for the investigation of claims to property attached in execution of a decree.

(6) In all cases of attachment before judgment, the Court or a Judge shall, at any time, remove the same on the defendant furnishing security as hereinbefore required together with security for the costs of the attachment.”

3.45 The case of **Standard Bank Limited v Brocks** ⁽¹⁾ held that:

“An interim attachment can only be issued where a defendant is about to remove or dispose of the property with intent to obstruct or delay execution of any decree that may be passed against him.”

3.46 Then in the case of **National Airports Corporation Limited v Mines Air Services (T/A Zambia Airways)** ⁽⁷⁾ the holding by the Court was that:

“1. An application for interim attachment of property under Order 26, rule 1 of the High Court

Rules can only be made before judgment for purposes of securing the judgment debtor's assets for use in execution of an eventual judgment. Such an application cannot be made after judgment.

2. The two requirements to be met under Order 26, rule 1, are that for such an order to be granted, there must first be a threat or intention on the part of the defendant to dispose of his assets in order to obstruct or delay execution of any judgment. Second, prior to making such an application, the plaintiff should call upon the defendant to provide security and only where the defendant fails to provide such security is the plaintiff empowered to apply for an interim order of attachment.”

3.47 In making the application, Stevan Vincent Varnell did not demonstrate as the party bearing the burden, being the applicant, that Thandiwe Martha Kambuzi intends to remove or dispose of the three motor vehicles that are listed in paragraph 13 of the affidavit which was filed in support of the application, in order to obstruct or delay the execution of any order that may be made against her.

3.48 Further, Stevan Vincent Varnell did not call up upon Thandiwe Martha Kambuzi prior to making the application, to furnish security, in line with **Order XXVI Rule 3 of the High Court Rules**.

3.49 Those conditions not having been satisfied, the application for attachment of property fails, and it is dismissed.

APPLICATION FOR AN ORDER OF INJUNCTION

3.50 Coming to the application for an Order of injunction, that was made pursuant to **Order XXVII Rule 1 of the High Court Rules** and **Order 29 Rule 1 of the Rules of the Supreme Court of England, 1965, 1999 Edition**.

3.51 **Order XXVII Rule 1 of the High Court Rules** provides 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.”

3.52 ***Order 29 Rule 1 of the Rules of the Supreme Court of England*** on the other hand provides that:

“1) An 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.”

3.53 The reasons for the application were as advanced in the affidavit which was filed in support of the application for the attachment of property.

3.54 In the List of Authorities and Skeleton Arguments which were filed in support of the application, the case of ***Akapelwa (sued as Induna Inete) & others v Nyumbu*** ⁽⁸⁾ was stated as having guided on the principles that govern the granting of orders of injunction as:

- i. Whether there is a serious question to be tried?
- ii. Whether damages would be an adequate remedy?
- iii. Whether the balance of convenience tilts in favour of the Order of injunction being granted?

iv. Whether the Plaintiff (Respondent) has come to Court with clean hands?

3.55 As to whether there is a serious question to be tried, reliance was placed on the case of **Harton Ndove v National Educational Company of Zambia Limited** ⁽³⁾ where Justice Chirwa noted that:

"Of course to entitle the plaintiffs to an interlocutory injunction, though the court is not called upon to decide finally on the right of 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 plaintiffs are entitled to relief."

3.56 It was argued that in this matter, Stevan Vincent Varnell had demonstrated that he transferred over USD190, 746.92 to Thandiwe Martha Kambuzi, as a result of her repeated representations. It was added that Thandiwe Martha Kambuzi had been unjustly enriched, as she used the funds to maintain a lavish lifestyle which was inconsistent with her claims.

3.57 On Stevan Vincent Varnell having suffered irreparable injury which could not be compensated by an award of damages, reliance was placed on the case of **Natural Valley Limited v Fairly Bottling Limited** ⁽⁹⁾ and it was stated that irreparable injury means injury which is substantial, and can never be adequately remedied or atoned for by damages.

- 3.58 It was stated that this position was reiterated in the case of ***Whidden Kanungwe v Zambia Sugar Plc*** ⁽⁶⁾.
- 3.59 The argument was that Stevan Vincent Varnell had shown that Thandiwe Martha Kambuzi had through fraudulent misrepresentation, acquired assets which she may dissipate or dispose of, which would make it impossible for Stevan Vincent Varnell to recover even if he were to succeed if he obtained a Judgment. Thus, damages would not suffice.
- 3.60 Coming to the balance of convenience, Stevan Vincent Varnell argued that in the case of ***ZIMCO Properties Limited v LAPCO Limited*** ⁽⁵⁾ the Supreme Court stated that:
- “We must make it clear that the question of balance of convenience between the parties only arises if the harm done will be irreparable and damages will not suffice to recompense the plaintiff for any harm which may be suffered as a result of the actions of the defendant which it is sought to restrain.”***
- 3.61 The argument was that the balance of convenience lay in favour of the Order of injunction being granted, as Thandiwe Martha Kambuzi may dispose of the assets thereby rendering the Judgment of the Court nugatory.
- 3.62 As regards coming to Court with clean hands, it was argued that the record did not show that Stevan Vincent Varnell had conducted himself in a manner that was legally impermissible. Further argument was made, that he had made full and frank disclosure of all the material facts,

including having made admissions of infidelity. Therefore, the application should be granted.

3.63 The gist of the opposition as deposed to by Thandiwe Martha Kambuzi has been seen above in the averments as made in the affidavit in opposition.

3.64 In the List of Authorities and Skeleton Arguments which were filed in opposition to the application, she argued that the jurisdiction of granting orders of injunction is that they should not determine matters on their merits, but only protect a party from irreparable injury.

3.65 As authority, the case of ***Hina Furnishing Lusaka Ltd v Mwaiseni Properties Ltd*** ⁽⁴⁾ was cited stating that the Court in that matter, cautioned that the discretion to grant orders of injunction has to be exercised judicially.

3.66 It was stated that Stevan Vincent Varnell had revealed how he acquired information relating to the vehicles, and that stalking is unconstitutional pursuant to Article 19. It was added that the information was obtained illegally, as it was done without the consent of Thandiwe Martha Kambuzi, in contravention of Section 17 of the Human Rights Act.

3.67 Thus, the Order of injunction should not be granted.

3.68 The Court in the case of ***Shell & B.P. Zambia Limited v Conidaris and others*** ⁽²⁾ 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."

- 3.69 The holding summarises the principles that govern the granting orders of injunction. From the pleadings and the affidavits which have been filed in the application, it can be seen that the parties have taken rival positions over the claims as made in this matter.
- 3.70 As such, there is a serious question to be tried.
- 3.71 As to whether damages would suffice, the argument is that Thandiwe Martha Kambuzi made fraudulent representations the basis upon which Stevan Vincent Varnell sent her the monies in dispute, and from which she possibly acquired the assets, including three cars.
- 3.72 Further argument was made, that Stevan Vincent Varnell may suffer irreparable injury should he succeed at trial, as Thandiwe Martha Kambuzi may dispose of the assets and the Judgment may be rendered nugatory.
- 3.73 The response was that the search that was conducted to ascertain ownership of the vehicles was illegal, as it was done without Thandiwe Martha Kambuzi's consent. Article 17 of the Constitution was stated as protecting such rights and that there was violation of *Section 19 of the Human Rights Act*.

3.74 The full citation of the Human Rights Act that was relied on, was not given. However, **Article 17 of the Constitution of Zambia** provides that:

“17. (1) Except with his own consent, a person shall not be subjected to the search of his person or his property or the entry by others on his premises.”

3.75 From what I can gather from the affidavit which was filed in support of the application, the records for the motor vehicles were obtained from the Road Transport and Safety Agency and not that an illegal search was conducted at Thandiwe Martha Kambuzi’s premises.

3.76 The Road Transport and Safety Agency is established in **Section 3 of the Road Traffic Act No 11 of 2002** as a body corporate.

3.77 I am unable to find how a search that was conducted at the Road Transport and Safety Agency was illegal based on copies of the certificate of registration of the motor vehicles that were exhibited to the affidavit which was filed in support of the application, alone.

3.78 The averments that were made in the affidavit which was filed in support of the application establish that the fear is that Thandiwe Martha Kambuzi may dispose of the vehicles in order to delay or obstruct execution of any Judgment that may be made against her.

3.79 I did find with regard to the application to attach property that Stevan Vincent Varnell had not adduced any evidence

to support the assertion that Thandiwe Martha Kambuzi was about to dispose of the properties so as to defeat any order that may be made against her.

3.80 The law in **Order XVII Rule 1 of the High Court Rules** is however, that a Court may grant an Order of injunction where property which is in dispute in the suit is in danger of being wasted, damaged or alienated by any party to the suit, for the purpose of staying and preventing a party from wasting, damaging or alienating the property.

3.81 What is the subject of the application for an Order on injunction is cars. By their nature, cars are subject to waste or damage.

3.82 Thandiwe Martha Kambuzi has not demonstrated by her affidavit in opposition, that she would be able to pay any damages should they be awarded against her.

4. CONCLUSION

4.1 As such, and in order that should Stevan Vincent Varnell succeed at trial, and in order that any Order that may be made against Thandiwe Martha Kambuzi may not to be nugatory, and upon Stevan Vincent Varnell having made an undertaking as to damages, I grant the Order of injunction restraining Thandiwe Martha Kambuzi from disposing of, transferring or otherwise dealing with the motor vehicles Mercedes Benz C200-Registration Mark CAD 6276ZM, Toyota Auris 9107-Registration Mark BAB 800 and Toyota Mark X – Registration number 6611 ZM.

- 4.2 As the order of injunction includes not dealing with the motor vehicles in any way, the said vehicles shall be forthwith parked at the office of the Sheriff of Zambia and the costs of such placement of the said motor vehicles with the Sheriff of Zambia shall be borne by Stevan Vincent Varnell.
- 4.3 The matter shall come up on 4th December, 2025 at 09:00 hours for Orders for Directions. Costs shall be in the cause.

DATED AT LUSAKA THE 26th DAY OF NOVEMBER, 2025

S. Kaunda

**S. KAUNDA NEWA
HIGH COURT JUDGE**

