

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

2023/HP/617

BETWEEN

JULDAN MOTORS LIMITED

JULY DANOBO

AND

RAYMOND DONOBO

ROAD TRANSPORT AND SAFETY AGENCY



1ST PLAINTIFF

2ND PLAINTIFF

1ST DEFENDANT

2ND DEFENDANT

Before the Honourable Lady Justice S. Chocho, in Chambers.

For the Plaintiffs: Mr. A. Mbambara of Messers A Mbambara Legal Practitioners

For the 1st Defendant: Mr. S.K. Simwanza and Mr. A Matakala of Messers Steven Osborne Advocates

For the 2nd Defendant: Mr. P. Shambulo – In house Counsel

RULING

Cases referred to:

1. *Ubuchinga Investments Limited V Teckle Michael Menstab and another* SCZ No. 25 of 2014
2. *Nottingham Building Society V Eure Dynamis Systems* (1993) L.S.R 468 AT 474
3. *Meade v Haringey Londonn Borough Council* (1979) 2 ALL ER 1016
4. *Mutulawila Farms Limited v Johan Nortje* (2010) 3 ZR 88
5. *Ahmed Abad v Turning and Metals limited* (1987) Z.R 86 (S.C)
6. *Day V Brownrigg* (1878) 10 Ch D 294 (CA)
7. *Tawela Akapelwa and Others V Josiah Mubukwanu Litiya Nyumbu*
(Appeal NO.004/2015) [2015] ZMSC 25

8. *American Cyanamid v Ethicon* [1975] AC 396

9. *Siskin (owners of cargo) and Others v Distos Compania Naviera* (1979) A.C 210 at Page 256.

Legislation referred to:

1. *High Court Act, Chapter 27 of the Laws of Zambia.*

2. *The Rules of the Supreme Court of England, White Book, 1999 Edition.*

3. *Road Traffic Act No.11 of 2002*

1. INTRODUCTION

1.1. This ruling is in respect of an application by the Plaintiff for an Order for mandatory interlocutory Injunction compelling the 1st and 2nd Defendants herein by themselves and their agents to issue and renew all necessary licenses and permits for 30 luxury buses, 2 trucks and trailers ('subject property') pursuant to ***Order 27 of the High Court Rules Chapter 27 of the Laws of Zambia*** as read together with ***Order 29 Rule 1 of the Rules of the Supreme Court of England, White Book, 1999 Edition.***

1.2. The application is supported by an affidavit in support of Ex-Parte Summons for an Order for mandatory interlocutory injunction and a list of Authorities and skeleton arguments filed into Court on the 19th of April, 2024.

2. BACKGROUND

- 2.1. The background to this matter as per pleadings and affidavit evidence presented before Court is that the Plaintiffs commenced an action against the 1st Defendant on the 12th of April, 2023 claiming the following reliefs;
- i) An Order by the Court instructing the Defendant to change ownership of the 30 luxury buses to the 1st Plaintiff.
 - ii) Damages for loss of business
 - iii) Cost; and
 - iv) Any other consequential relief the Court may deem fit under the circumstances.
- 2.2. The Defendant entered appearance and filed a Defence on the 26th of April, 2023.
- 2.3. The 1st Defendant filed into Court on the 13th of June, 2023 an application for an Order for Interim injunction which was subsequently declined by a Ruling of this Court dated 25th July, 2023.
- 2.4. The Defendant renewed its application before the Court of Appeal under cause number **CAZ/08/437/2023** seeking the same injunctive relief as was done before this Court. The Court of Appeal subsequently dismissed the renewed application in a Ruling dated 5th January, 2024.
- 2.5. On the 20th of March, 2024 this Court made an Order to join the 2nd Defendant to the proceedings.

2.6. The Plaintiffs made an application for an Order for mandatory interlocutory injunction on the 19th of April, 2024, which was granted ex parte on the 26th of April, 2024 and heard inter partes.

3. AFFIDAVIT EVIDENCE

- 3.1. The Plaintiffs aver that they have been unable to obtain operating licenses and permits from the 2nd Defendant owing to the neglect and refusal by the Defendants.
- 3.2. The Plaintiffs aver that the 1st Defendant through his Advocates caused to be written a letter to the 2nd Defendant instructing them not to renew or issue any annual permits for the subject property without the express authority of the 1st Defendant.
- 3.3. The Plaintiff avers that there is urgent need for the first plaintiff to obtain operating licenses and all necessary permits in order to comply with the Ruling of the Court of Appeal that the parties maintain the status quo, until the determination of this matter.
- 3.4. The Plaintiffs further aver that the 1st Defendant has been intimidating and inciting the 2nd Defendant to interfere in the Plaintiffs affairs insofar as the same relate to the subject property.
- 3.5. In opposing the application, the 1st Defendant filed an affidavit in opposition on the 13th of May, 2024.
- 3.6. The 1st Defendant deposed that he has never interfered with the operations of the business of the 1st Plaintiff, who has been operating

and obtaining Road service licenses without the 1st Defendants authority.

3.7. The 1st Defendant in his affidavit further averred that the Plaintiffs wanted to perpetuate an illegality as the means by which they have been obtaining the road service licenses for the subject property are unknown to the 1st Defendant and outside the provision of the law and that the status quo the Plaintiffs wish to maintain is that by which they perpetuate wrongs using the authority of the Court.

3.8. The 2nd Defendant did not file any affidavit in opposition but gave viva vocae submissions on points of law at the inter parte hearing. The 2nd Defendant basically submitted that the mandatory injunction be discharged on the basis that the mandatory injunction cannot stand as an action on its own against the 2nd Defendant. The 2nd Defendant relied on Order 5 Rules 11-20 of the High Court Rules and authority in the case of ***Siskin (owners of cargo) and Others v Distos Compania Naviera (1979) A.C 210 at Page 256.***

4. THE LAW

4.1. I have had occasion to review and consider the application, having heard Counsel for the Plaintiffs and the Defendants, read the affidavits, skeleton arguments and list of authorities for which I am grateful.

4.2. The Plaintiffs drew the Courts attention to **Order 27 Rule 1 of the High Court Rules Chapter 27 of the Laws of Zambia** which provides as follows;

"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”.

- 4.3. Reliance was also placed on the case ***Ubuchinga Investments Limited V Teckle Michael Menstab and another SCZ No. 25 of 2014*** in which the Court state as follows:

“... Evidently, this provision does give the Court power to grant an injunction where property in dispute is in danger of being wasted, damaged or alienated by a party to an action. There Order is expressed in the widest terms because injunctions are equitable and temporary reliefs whose jurisdiction to grant or not to grant is left entirely to the discretion of the Court...”

- 4.4. The Plaintiff further relied on ***Order 29 Rule 1 of the Rules of the Supreme Court of England*** which states as Follows;

“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 the party’s writ, originating summons or counter claim or third-party notice as the case may be”.

- 4.5. The Plaintiff also made submissions basing their arguments on the cases of ***Nottingham Building Society V Eure Dynamis Systems (1993) L.S.R 468 AT 474, Meade v Haringey Londonn Borough***

Council (1979) 2 ALL ER 1016 and Mutulawila Farms Limited v Johan Nortje (2010) 3 ZR 88 which I have taken note of.

- 4.6. In response to the Plaintiffs submissions, 1st Defendant submitted that damages are adequate in this matter, thus negating the need for a mandatory interlocutory injunction because the concern of the Plaintiffs is money as was in the case of **Ahmed Abad v Turning and Metals limited (1987) Z.R 86 (S.C)**.
- 4.7. The 1st Defendant further submitted that the grant of a mandatory injunction is in this case not appropriate as there is no violation of the Plaintiffs legal or equitable right as the Plaintiffs have no right to the contested vehicles as they are not the registered owners and their claim is not anchored on any substantive equitable right to afford them a mandatory injunction and placed reliance on the case of **Day V Brownrigg (1878) 10 Ch D 294 (CA)**.

5. COURTS DECISION

- 5.1. Having considered the parties submissions, the question for determination is whether this is a proper case to grant the Plaintiffs their application for a mandatory interlocutory injunction.
- 5.2. The Supreme Court in the case of **Tawela Akapelwa and Others V Josiah Mubukwanu Litiya Nyumbu (Appeal NO.004/2015) [2015] ZMSC 25** after itemizing the Principles of the American Cyanamid case, held that;

“These considerations be foremost in the mind of any judge considering whether or not to grant an injunction”.

5.3. The ***American Cyanamid v Ethicon [1975] AC 396*** case itemizes the considerations as follows;

- a) The claimant should show that there was a real issue to be tried.
- b) The court should consider whether damages were an adequate remedy for a claimant if an injunction was not granted. If so, an injunction would not be available.
- c) If damages were not an adequate remedy, the court should then ask whether the claimant would be able to give an undertaking in damages to the defendant.
- d) If it was considered that there was any difficulty regarding the availability of damages on either side, the court should consider the balance of convenience between the parties. If these factors were evenly balanced, the court should consider maintaining the status quo.

5.4. This Court has jurisdiction to grant a mandatory injunction directing that a positive act should be done to repair some omission or to restore the prior position by undoing some wrongful act but this is a very exceptional form of relief and the Court will decline to grant a mandatory injunction which could not be enforced. (see para ***29/L/1 RSC 1999 Edition at page 563***).

- 5.5. The case of ***Nottingham Building Society V Eurodynamics Systems (1993) L.S.R 468 at 474*** cited by the Plaintiffs has laid down principles to be applied; first, the overriding consideration is which course is likely to involve the least risk of injustice if it turns out to be wrong in the sense of granting an interlocutory injunction to a party who fails to establish his right at trial (or would fail if there was a trial) or, alternatively in failing to grant an injunction to a party who succeeds (or would succeed at trial).
- 5.6. Secondly, in considering whether to grant a mandatory injunction, the Court must keep in mind that an order which requires a party to take some positive step at an interlocutory stage may well carry a greater risk of injustice if it turns out to have been wrongly made than an order which merely prohibits action, thereby preserving the status quo.
- 5.7. Thirdly, it is legitimate, where a mandatory injunction is sought, to consider whether the Court feels a high degree of assurance that the Plaintiff will establish his right at trial.
- 5.8. Finally, even where the Court is unable to feel any high degree of assurance that the plaintiff will establish his right, there may still be circumstances in which it is appropriate to grant a mandatory injunction at an interlocutory stage such as were the risk of injustice if the injunction is refused sufficiently outweigh the risk of injustice if granted.

- 5.9. I have also taken note of the provisions of **Section 105(1)(a) of the Road Traffic Act No.11 of 2002** on which the 1st Defendant have based their submissions.
- 5.10. In Considering whether to grant or not to grant the Plaintiffs their application for a mandatory interlocutory injunction, it is absurd for the Defendants to assume that the buses should/cannot be licensed. As I see it, the 1st Defendant's action to direct the 2nd Defendant not to renew the licenses unless the 1st Defendant deems it fit to give authority is dangerously bordering on contempt of Court. The 2nd Defendant on its own accord advised the Plaintiff's to obtain a Court Order for it to issue the licenses and such Order was granted.
- 5.11. Maintaining the status quo as per my previous Ruling would be that the Plaintiff renews the licenses with the authorization of the 1st Defendant and that the 1st Defendant does not unreasonably withhold such authorization. By Ruling of the Court dated 25th July, 2023 wherein I Ordered that the status quo at the company be maintained and the buses continue to run, this clearly points to the fact that the buses must run duly licensed.
- 5.12. The question as to ownership of the buses in dispute is one that is to be determined at trial.

6. CONCLUSION

- 6.1. I would therefore Order that the ex parte mandatory interlocutory injunction granted on 26th April, 2024 is hereby discharged.

- 6.2. I further Order that the renewed licenses **BE** and **IS** considered to have been issued as though the 1st Defendant availed the due authorization.
- 6.3. For the avoidance of doubt, it is hereby Ordered that the 1st Defendant cannot and should not attempt to sabotage the running of the buses and Company. The 1st Defendant is Ordered to ensure that he grants authorization for the renewal of licenses and does all such acts as is needed of him for the smooth running of the buses as per law provides. The status quo shall be maintained until the full and final determination of this action.
- 6.4. Each party to bear its own costs.

Delivered at Lusaka on the 12th day of September, 2024.


S. CHOCHO
HIGH COURT JUDGE

