

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

2017/HP/2088

(Civil Jurisdiction)

**IN THE MATTER OF: THE PROTECTION OF FUNDAMENTAL
RIGHTS REGULATIONS, 1969**

**IN THE MATTER OF: ARTICLE 28 OF THE CONSTITUTION
OF ZAMBIA**

**IN THE MATTER OF: ARTICLES 8, 12, 13, 15, 16, 17, 21, 23,
256 AND 266 OF THE CONSTITUTION
OF ZAMBIA**

**IN THE MATTER OF: THE LANDS AND DEEDS REGISTRY ACT
CHAPTER 185 OF THE LAWS OF ZAMBIA**

**IN THE MATTER OF: THE LANDS ACQUISITION ACT, CHAPTER
189 OF THE LAWS OF ZAMBIA**

**IN THE MATTER OF: THE ENVIRONMENTAL MANAGEMENT
ACT NO. 12 OF 2011**

BETWEEN:

JOHN CHISENGA KAPABILA

LISA KALUNGA CHISENGA

MUTOLWA AARON

CHIBUYE CHISENGA

AND

NICOLE-NKALONGA

INVESTMENTS LIMITED

SVEN EVEN FRYON

SERENJE DISTRICT COUNCIL

ATTORNEY GENERAL

THE COMMISSIONER OF LANDS

1ST PETITIONER

2ND PETITIONER

3RD PETITIONER

4TH PETITIONER

1ST RESPONDENT

2ND RESPONDENT

3RD RESPONDENT

4TH RESPONDENT

5TH RESPONDENT



***Before Hon. Mr. Justice C. Kafunda in Chambers at Lusaka the 24th
day of March, 2023***

For the 1st and 2nd Petitioners:

*Mrs. M. S. Tembo of Malambo & Co.,
with B. Siachitema of Lusitu Chambers*

For the 3rd Respondent:

*Nsama Augustine with Natasha
Mwelwa from Lusaka City Council*

RULING

Cases referred to:

- 1. *Turnkey Properties v Lusaka West Development Company Limited and Others (1984) ZR 85;***
- 2. *Hilary Bernard Mukosa v Michael Ronaldson (1993) S.J. 25 (S.C.);***
- 3. *Moses Lukwanda and 9 Others v Zambia Airforce Projects Limited and 7 Others CAZ/08/323/2019;***
- 4. *Shell and B.P (Zambia) Limited v Conidaris and Others (1975) Z.R. 174;***
- 5. *Aiyub Ismail Sadar and Another v Bright Sichinga and 2 Others Appeal No. 134 of 2018; and***
- 6. *Mwenya and Another v Kapinga (1998) ZR 17***

This is a Ruling on the 1st and 2nd Petitioners' application for an injunction. The application is supported by an affidavit sworn by the aforementioned Petitioners and skeleton arguments.

It is deposed in the affidavit that on 26th September 2018, the Zambia Environmental Management Agency (ZEMA) issued an order for the 1st Respondent to cease operations or activities. It was averred that the restricted activities included the cultivation of soya beans and other agricultural crops, land and vegetation clearing, land leveling, dust generating construction of roads, demolition of settlements and marking of the construction area for any structures in the subject property.

The deponents stated that from September 2022 to date, the 1st Respondent has been cultivating large tracks of land, leveling land, drilling boreholes, constructing water reservoirs in the middle of the fields and placing center pivots on the land. It was averred that the cultivation and land leveling reached the deponents' homestead and transcended beyond their home.

The deponents averred that on 28th October 2022, they wrote a letter to ZEMA complaining of the activities of the 1st Respondent but that they have not received any intervention to date.

The deponents stated that their interests in the land will be adversely affected if this court does not intervene to restrain the 1st Respondent from undertaking the aforementioned activities on the land.

On the principles relating to the grant of an injunction, the Petitioners referred, in the skeleton arguments, to the case of **Turnkey Properties v Lusaka West Development Company Limited and Others**¹ where the Supreme Court held that:

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

Further, the Petitioners cited the case of **Hilary Bernard Mukosa v Michael Ronaldson**² wherein it was held that:

“An injunction would only be granted to a Plaintiff who established that he had a good and arguable claim to the right which he sought to protect.”

The Petitioners argued that the activities of the 1st Respondent are causing irreparable damage to the land and environment and thus affecting the interests of the 1st and 2nd Petitioners in the land which is subject of litigation herein. The Petitioners then cited the case of **Moses Lukwanda and 9 Others v Zambia Airforce Projects Limited and 7 Others**³ where the Court of Appeal held that:

“...disputes to do with damage to the environment...should enjoy the principles that apply to loss of land where one does not have to prove irreparable injury. The Court went further to hold that one does not need to prove that damage to the environment will result in irreparable injury because once damaged, the environment, like land cannot be quickly restored to its original state and the damage may result in untold suffering for generations.”

There was no affidavit in opposition filed on behalf of the Respondents.

At the inter parte hearing of the application, Counsel for the Petitioners relied on the affidavit and skeleton arguments filed in respect of the application. Additionally, Counsel submitted that there is a serious question to be tried in *casu* and that as such, there is need to maintain the status quo. Further, Counsel contended that damages are not an adequate remedy for loss of land.

Counsel for the 3rd Respondent stated that he had no objection to the Petitioners' application.

I have considered the application for the injunction and the affidavit evidence tendered in support of the application. I have further considered the arguments by Counsel for the 1st and 2nd Petitioners.

The principles regarding the grant of injunctions are well settled. In the case of **Shell and B.P (Zambia) Limited v Conidaris and Others**⁴, it was 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 that cannot be repaired.”

Further, in the **Hilary Bernard Mukosa** case (Supra) cited by the Petitioners, the court held that an injunction will only be granted to a Plaintiff who establishes that he has a good and arguable claim to the right which he seeks to protect.

It has been argued by Counsel for the 1st and 2nd Petitioners that the right to relief is clear because the Petitioners have customary land rights in the property in question.

I have examined the record and I am of the view that the Petitioners do in fact have an interest in the property and as such I find that

they have a good and arguable claim to the right they seek to protect.

Further, in relation to the question of adequacy of damages, Counsel for the Petitioners has referred the court to the case of **Moses Lukwanda and 9 Others v Zambia Airforce Projects Limited and 7 Others (Supra)** wherein the Court of Appeal held that one does not need to prove that damage to the environment will result in irreparable injury because once damaged, the environment, like land cannot be quite restored to its original state.

Further, in the case of **Aiyub Ismail Sadar and Another v Bright Sichinga and 2 Others**⁵, the Court of Appeal citing the Supreme Court holding in the case of **Mwenya and Another v Kapinga**⁶, held that the position of Zambian law is that it is presumed that irreparable injury arises from loss of land, no matter how ordinary.

In view of the foregoing authorities, I am of the view that damages would not be an adequate remedy to compensate the Petitioners for the loss in the interest in the land in question and also for irreparable damage that is likely to occur to the land and the

environment as a result of the 1st Respondent's activities on the said land.

Therefore, having considered the circumstances of the case in *casu*, I find that the balance of convenience tilts in favour of granting the application for an interim injunction.

I therefore order accordingly.

Leave to appeal is granted.

Costs in the cause.

Delivered at Lusaka this 24th day of March, 2023



C. Kafunda
HIGH COURT JUDGE