

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

2021/HP/1280

BETWEEN:

KASANKA TRUST LIMITED

1ST PLAINTIFF

ETSON MWEWA *(Suing as
Chairperson for Mapepala
Community Forest
Management Group)*

2ND PLAINTIFF

LEFAI MUKOSHA *(Suing as
Chairperson for Naobowa
Community Forest
Management Group)*



3RD PLAINTIFF

AND

ABDULAZIZ AHMED MUHAMED

1ST ALLEGED CONTEMNOR

GULF ADVENTURE LIMITED

2ND ALLEGED CONTEMNOR

LAKE AGRO INDUSTRIES LIMITED

3RD ALLEGED CONTEMNOR

***Before Hon. Mr. Justice C. Kafunda in Chambers at Lusaka the 22nd
day of March, 2023***

For the Plaintiffs: M. Batakathi Muyatwa Legal Practitioners

*For the 1st & 2nd Defendants: A. Kasolo, N. Kamanga, J.B Sakala of
Mulilansolo Chambers*

For the 3rd Defendant: B. Matandiko – In House Counsel

RULING

Cases referred to:

- 1. *Attorney General v Times Newspaper Limited* [1973] 3 All ER 54;**
- 2. *Deborah Building Equipment v Scaffco*;**
- 3. *Director General of Fair-Trading v Buckland* [1990] 1 WLR 920**
- 4. *Enock Kavindele and Another v Bologna Properties and Another* 2013/HP/0196.**

Other works referred to:

- 1. *The Electronic Communications and Transactions Act No. 4 of 2021*; and**
- 2. *The Rules of the Supreme Court of England, 1999 Edition (White Book)*.**

This is an application for leave to commence committal proceedings for contempt of court and to issue a writ of sequestration against a body corporate. The application is supported by an affidavit, jointly sworn by one Christopher Chisula C. K. Kangwa and one Brian Chilambe, as well as skeleton arguments.

It was deposed that by a Ruling of this court dated 25th January 2022, the Plaintiffs were granted an order of interim injunction restraining the 2nd and 3rd Alleged Contemnors from *inter alia* any

further cutting of trees, clearing vegetation and construction works. Further, that despite the aforesaid Ruling of the court, the 2nd and 3rd Alleged Contemnors have continued to cut down trees, clear vegetation and undertake further activities and developments on the land.

Exhibited in the affidavit are photographs of the aerial view showing the land use changes between January to April, 2022, as well as a video footage showing an aerial view of land use changes as at 19th August, 2022.

The Plaintiffs stated in the skeleton arguments that the application is premised on **Order 52 Rule 2 (2) and Order 46 Rule 5 (1) of the Rules of the Supreme Court of England (White Book) 1999 Edition (“RSC”)** which provide as follows:

Order 52 Rule 2 RSC

(1) No application to a Divisional Court for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.

(2) An application for such leave must be made ex parte to a Divisional Court, except in vacation when it may be made to a judge

in chambers, and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

Order 46 Rule 5 RSC

(1) Notwithstanding anything in rules 2 and 4, an application for leave to issue a writ of sequestration must be made to a Judge by motion.

The Plaintiffs contended that the actions of the 2nd and 3rd Alleged Contemnors in cutting down trees and clearing vegetation after this court ordered them to stop doing so is a clear attempt to impede and interfere with the administration of justice. The case of **Attorney General v Times Newspapers Limited**¹ was cited as authority for this position. Further, the Plaintiffs argued that the actions of the Alleged Contemnors amount to civil contempt for which they can be committed to prison. In support of this position, the Plaintiffs referred to the case of **Deborah Building Equipment v Scaffco**² where the court stated as follows:

“the High Court also has...a discretionary power to commit a contemnor to prison for negligently failing to comply with an injunction”.

The Plaintiffs also referred to the case of **Director General of Fair Trading v Buckland**² wherein the principle that a Director of a body corporate may be committed to prison for contempt where the injunction was issued against the body corporate, was espoused.

An affidavit in opposition to the Plaintiffs' application was made, which affidavit was sworn by the 1st Alleged Contemnor herein. He deposed that the order of injunction served on the 2nd and 3rd Alleged Contemnors did not expressly indicate in the penal notice anything relating to the issuance of a writ of sequestration. Further, that the 1st Plaintiff has not produced any evidence to show that the Alleged Contemnors disobeyed the Ruling on the injunction after service of the court process on them.

The deponent further asserted that the photographs and video footage purportedly showing the aerial view of land use changes were electronically generated and stored and that the 1st Plaintiff

has not provided information with regards to the authenticity of the same.

It was averred in the skeleton arguments in opposition that the evidence of photographs and of the video footage produced in the 1st Plaintiff's affidavit in support of the application has not complied with **section 9 of the Electronic Communications and Transactions Act** which states thus:

(1) In any legal proceedings, the rules of evidence shall not be applied so as to deny the admissibility of a data message in evidence —

(a) on the mere grounds that it is constituted by a data message; or

(b) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in its original format provided the substance is the same.

(2) Information in the form of a data message shall be given due evidential weight.

(3) In any legal proceedings, when assessing the evidential weight of a data message, regard shall be had to—

(a) the reliability of the manner in which the data message was generated, stored or communicated;

(b) the reliability of the manner in which the integrity of the data message was maintained;

(c) the manner in which its originator was identified; and (d) any other relevant factor.

(4) A data message made by a person in the ordinary course of business, or a copy or printout of, or an extract from, the data message certified to be correct by an officer in the service of that person, shall on its mere production in any civil, criminal, administrative or disciplinary proceedings under a written law, be admissible in evidence against a person and rebuttable proof of the facts contained in a record, copy, printout or extract.

It was thus argued that this evidence should be disregarded by the court and that in the absence of the said evidence, there is no evidence to prove that the Alleged Contemnors have disobeyed the order of injunction.

It was further contended that the Penal Notice on the order of interim injunction falls short of the requirement relating to a body corporate in that the same does not warn the Alleged 2nd and 3rd

Contemnors of the likely punishment in the event of disobedience of the order. Further, that the said shortcoming therefore disentitles the 1st Plaintiff from obtaining leave to commence contempt proceedings against the Alleged 2nd and 3rd Contemnors. As authority for this position, the case of **Enock Kavindele and Another v Bologna Properties and Another**³ was cited.

I have carefully considered the application as well as the parties' arguments in relation to the same. The major question to be determined in *casu* is whether the Plaintiffs should be granted leave in respect of the *ex parte* summons for leave to commence contempt proceedings and the notice of motion for leave to issue writ of sequestration.

The former application has been made pursuant to **Order 52 Rule 2 (2) RSC** which states thus:

“An application for such leave must be made ex parte to a Divisional Court, except in vacation when it may be made to a judge in chambers, and must be supported by a statement setting out the name and description of the applicant, the name,

description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on”.

I wish to point out that the duty of the court at this stage of the proceedings is simply to determine whether a *prima facie* case has been made out against the Alleged Contemnors to warrant the grant of leave to commence committal proceedings. Therefore, having considered the affidavits and skeleton arguments on record, I am satisfied that the Plaintiffs have established a *prima facie* case for contempt proceedings to ensue against the Alleged Contemnors. Accordingly, leave to commence contempt proceedings is granted.

I will now move on to determine the application for leave to issue writ of sequestration, made pursuant to **Order 46 RSC**.

It is worth noting that under **Order 45/7/6 RSC** it is a requirement that a penal notice be endorsed on the Order whose enforcement by

way of sequestration is being sought. The said provisions states thus:

“It is a necessary condition for the enforcement of a judgment or order under r.5 by way of sequestration or committal, that the copy of the judgment or order served under this rule should have the requisite penal notice prominently indorsed thereon.”

The aforesaid provision goes on to state that a penal notice, in the case of a judgment or order requiring a body corporate to abstain from doing an act should provide as follows:

“If you, the within named A.B., Ltd disobey this judgment (or order)), you may be held to be in contempt of Court and liable to sequestration of your assets.”

In *casu*, the penal notice provided as follows:

“if you the within named Defendants either by yourselves, servants, agents or otherwise disobey this Order of Interim Injunction you shall be liable to be cited for contempt and upon conviction you may be

sentenced to pay a fine or to imprisonment or both.”

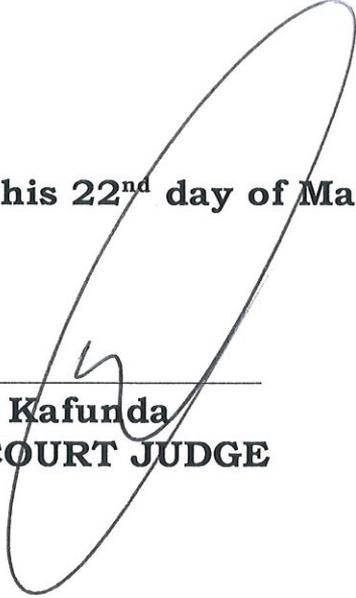
It will be noted that, as properly argued by Counsel for the Alleged Contemnors, the penal notice in *casu* falls short of the requirements under **Order 45 Rule 7 of the Rules RSC** in that it did not provide for sequestration as a consequence of the failure to abide by the Order of Interim Injunction.

In the premises, I am inclined to deny the Plaintiffs' application for leave to issue writ of sequestration.

I therefore order accordingly.

No order as to costs.

Delivered at Lusaka this 22nd day of March, 2023



C. Kafunda
HIGH COURT JUDGE