

IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT KABWE
(Civil Jurisdiction)

APPEAL Nº 105 OF 2018

BETWEEN:

BERNARD MUKUPA CHISANGA & 25 ORS

APPELLANTS

AND

KABWE MUNICIPAL COUNCIL

RESPONDENT

CORAM: **Chashi, Lengalenga and Siavwapa, JJA**
On 16th October, 2018 and 22nd October, 2019.

For the Appellants: No appearance

For the Respondent: Mr. B. J. Abwino – Council Advocate (KMC)

J U D G M E N T

LENGALENGA, JA delivered the Judgment of the Court.

Cases referred to:

- 1. AMERICAN CYANAMID COMPANY v ETHICON LIMITED
(1975) AC 396**
- 2. SHELL & BP ZAMBIA LTD v CONIDARIS & ORS (1975) ZR 174**
- 3. LONDON AND BLACKWALL ROY v CROSS (1886) 31 CH. D
345**

3. **LONDON AND BLACKWALL ROY v CROSS (1886) 31 CH. D 345**
4. **HONDLING XING XING BUILDING CO LTD v ZAMCAPITAL ENTERPRISES LTD (2010) 3 ZR**
5. **ZINKA v ATTORNEY GENERAL (1990 – 92) ZR 73**
6. **NDOVI v NATIONAL EDUCATIONAL CO LTD (1980) ZR 184**
7. **MWENYA & ANOR v KAPINGA (1998) SJ 12 (SC)**
8. **HILARY BERNARD MUKOSA v MICHAEL RONALDSON (1993) SJ 25 (SC)**
9. **MOBIL ZAMBIA LTD v MSISKA (1983) ZR 86 (SC)**
10. **TITO v WADDEL (Nº 2) (1977) CH. D 106 at p. 322**
11. **JULDAN MOTORS LTD & ANOR v NASSA IBRAHIM & ANOR – CAZ/08/209/2017**
12. **MICHAEL CHILUFYA SATA v CHANDA CHIMBA III & ORS (2011) 2 ZR 444**

Legislation referred to:

1. **THE LANDS AND DEEDS REGISTRY ACT, CHAPTER 185 OF THE LAWS OF ZAMBIA**
2. **THE RULES OF THE SUPREME COURT, 1999 EDITION**
3. **THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA**
4. **THE COURT OF APPEAL ACT, Nº 7 OF 2016**

1.0 INTRODUCTION

- 1.1 This is an appeal against the ruling of the High Court delivered on 8th December, 2017 by Hon Mr. Justice M. L. Zulu.

2.0 BACKGROUND TO THE APPEAL

- 2.1 The background to this appeal is that the Appellants herein commenced an action by way of Writ of Summons on 27th

September, 2017 against the Respondent herein claiming a number of reliefs, among them, an order of interim injunction to restrain the Respondent from clearing, developing, leasing, advertising, subdividing or selling the Appellants' plots until final determination of the matter.

- 2.2 The Appellants' application for an order of interim injunction was supported by an affidavit sworn by one Bernard Mukupa Chisanga on his own behalf and that of his co-Appellants. The gist of his averments therein is that in February, 2015 he and the other Appellants were offered commercial plots at Tushane in Lukanga township in the Kabwe District of the Central Province of the Republic of Zambia for which they paid the requisite fees for acceptance of the said plots and that the Respondent confirmed the offers. According to his further averments, the Respondent, however, started developments on the Appellants' plots on the pretext of creating a transit bus station and the said plots have since been repossessed through a re-entry. He further deposed that all efforts to challenge the said decision have failed as the Respondent's decision was final. The said deponent further attested to the fact that none of the

Appellants gave written consent to surrender their plots to the Respondent. He averred that they were neither given alternative plots nor compensated for the demolition of the partially constructed structures and building materials on the plots which he and other Appellants in their arguments state is indicative that damages may not be adequate to compensate them for the loss of the said land.

- 2.3 The Appellants were initially granted an *ex-parte* order of interim injunction on 4th October, 2017 which was later opposed by the Respondent in the affidavit in opposition filed on 9th October, 2017. In the said affidavit in opposition, the deponent one Mwandwe Mwamba, a Senior Legal Assistant employed by the Respondent in the Department of Legal Services, averred that the Respondent, having been bestowed with authority to plan, re-plan and monitor development within the municipality of Kabwe, did not at any given time, authorise any developments on the subject plots. He further averred that Stand N^o 2037 as claimed by the Appellants is under leasehold of the Respondent Council and is not State land. He further averred that the Respondent's decision to construct the Kabwe transit bus station at Stand N^o 2037 was a matter of public

policy that overrides the desires of selfish ambitions of a few disgruntled individuals and is meant to benefit the residents of Kabwe and Zambian citizenry.

2.4 The learned trial judge considered the affidavit evidence, submissions and authorities of **AMERICAN CYANAMID COMPANY v ETHICON LIMITED**¹ and **SHELL & BP ZAMBIA LTD v CONIDARIS & ORS**². He acknowledged that the cited authorities brought out three main principles to be considered before a court can exercise its discretionary power to grant injunctive relief. He thus stated that according to the Supreme Court's decision in the celebrated Zambian case of **SHELL & BP ZAMBIA LTD v CONIDARIS & ORS**, a party seeking injunctive relief must demonstrate the following:

- (a) **A clear right to relief;**
- (b) **Irreparable damage or injury that is likely to be suffered that cannot be atoned for by damages; and**
- (c) **That the balance of convenience lies in that party's favour in granting the injunction.**

2.5 In arriving at his final decision on whether or not to grant the injunctive relief sought, the learned trial judge considered whether or

