

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

**2017/HP/1818**

BETWEEN:

**AARON KAMALONDO**

AND

**FRED KAFULA**



**PLAINTIFF**

**DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 30<sup>th</sup> DAY OF  
JANUARY, 2018**

*For the Plaintiff : Mr G. Lungu, Muleza Mwiimba and Company*

*For the Defendant : Mrs M. Marabesa Mwenya, Legal Aid Counsel, Legal Aid  
Counsel, Legal Aid Board.*

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## **R U L I N G**

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CASES REFERRED TO:

- 1. *Shell and BP Zambia Limited V Conidaris and others 1975 ZR 174***
- 2. *American Cyanamid V Ethicon Limited 1975 1 ALL ER 504***

LEGISLATION REFERRED TO:

- 1. *The High Court Rules, Chapter 27 of the Laws of Zambia***

This is a ruling on an application for an order of injunction, made pursuant to Order 27 of the High Court Rules, Chapter 27 of the Laws of Zambia. Counsel relied on the affidavit sworn in support of the application, and filed on 19<sup>th</sup> October, 2017. He prayed that the application be granted.

Counsel for the Defendant stated that they strongly opposed the application, and relied on the affidavit in opposition filed on 25<sup>th</sup> October, 2017, as well as the skeleton arguments filed on the same date. Counsel's submission was that in granting the order of injunction, the court should take into account firstly that the property in issue belongs to the Defendant, and that the Plaintiff did not take possession of the said property in terms of occupying it, and lastly that the Plaintiff was in rental arrears of over three months, and the Defendant as landlord by law was entitled to take possession of the property.

It was further Counsel's argument that the Plaintiff's claims could be atoned for by damages, and therefore this was not a proper case in which the injunction should be granted. On that basis, Counsel prayed that the ex-parte order of injunction should be discharged.

In reply, Counsel for the Plaintiff submitted that there is procedure for evicting a defaulting tenant, and no notice had been given to the Plaintiff notifying him of the breach. It was also submitted that the Defendant had contradicted himself by stating in one breath that the Plaintiff did not take possession of the property, and in another that he had accumulated rental arrears. It was prayed that the ex-parte order of injunction be confirmed.

I have considered the application. It was made pursuant to Order 27 of the High Court Rules, Chapter 27 of the Laws of Zambia which 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***

