

IN THE SUPREME COURT OF ZAMBIA

(147)
SCZ JUDGMENT NO. 21 OF 1988

HOLDEN AT LUSAKA

Application No. SCZ/8/139/1987

(Civil Jurisdiction)

SITIMA TEMBO

Applicant

and

NATIONAL COUNCIL FOR
SCIENTIFIC RESEARCH

Respondent

CORAM: Gardner, J.S. , in Chambers

29th April, 1988

N. Simango, Legal Aid Counsel, for the applicant

N. Kawanambulu, Messrs Shamwana and Company, for the respondent

J U D G M E N T

In this case the applicant applies for an order of committal of the respondent's representative on the grounds that, being aware of an injunction which had been issued by this court, the respondent's representative continued to demolish the applicant's property contrary to the terms of the injunction. Affidavit evidence has been led to the effect that, on the morning of the action complained of, the respondent's representative was shown a copy of this court's order and refused to take notice of it; such refusal taking the form of instructing his work force to continue to demolish the applicant's property. There was further affidavit evidence that a copy of the order was served upon the respondent in the afternoon of the same day.

The order was not endorsed with^a penal notice in accordance with Order 45 Rule 7(4) the Supreme Court Practice (1976) Edition (The White Book).

2/.....Mr. Simango

Mr. Simango argued that the note to Order 45 Rule 7(7) indicated that it was sufficient for the purpose of committal if the person whom it was intended to commit had knowledge of the injunction.

Mr. Kawanambulu argued that the absence of the penal notice was fatal to the applicant's application, and that, where a person had known about an injunction, it was still necessary for that person to be warned of the possibility of committal if the injunction was disobeyed.

Order 45 Rule 7(4) provides that it is necessary for a written notice of an injunction to be endorsed with a penal notice, and in my view the exceptions referred to in Note 7 to the rule apply only when there has been insufficient time to prepare a written notice of injunction. Once a written notice has been prepared it must contain a penal notice in accordance with Rule 7(4) in order to make a breach of the injunction the subject of an order of committal. To hold otherwise would be render the provision requiring a penal notice valueless, in that all injunctions by their very nature are matters of urgency, and parties wishing to enforce injunctions would in all cases be able to avoid the necessity for a penal notice by relying on verbal notice.

As the applicant in this case did in fact have time to draw a written order, and, as such order did not contain a penal notice as required, the application for an order of committal is refused.

