

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)

SCZ8/39/2006

B E T W E E N:

INFINITY TELEVISION LIMITED

APPELLANT

AND

CHAMBA VALLEY ROSE GARDENS LTD	1 ST RESPONDENT
ODY'S WORKS COMPANY LIMITED	2 ND RESPONDENT
ODYSSEAS MANDENAKIS LIMITED	3 RD RESPONDENT
THE COMMISSIONER OF LANDS	4 TH RESPONDENT

COARM: LEWANIKA, DCJ, CHIRWA, CHITENGI, JJS

On 16th July 2006 and 2007

For the 1st Respondent: .W.M. KABIMBA of W.M. Kabimba & Co.

For the 2nd and 3rd

Respondents: S. SIKOTA of Central Chambers

For the 4th Respondent: D.Y. SICHINGA, Chief State Advocate

For the Appellant: Ms N. MUTTI of Lukona Chambers

JUDGMENT

LEWANIKA, DCJ delivered the judgment of the Court.

AUTHORITIES REFERRED TO:

1. MANAL INVESTMENT LTD VS LAMISE INVESTMENT LTD, 2001, ZR, 24

When we heard this Motion, we allowed the Motion and set aside the Order of the single Judge and stated that we would give our reasons later and we now do so.

In this Motion the Respondents had prayed for an Order that the Order of injunction granted to the Appellant herein on 13th June, 2006 be discharged or revised on the following grounds:-

1. That the learned Judge erred when he granted an order of injunction pending appeal when there was no appeal pending before the court within the meaning of Rules 54 and 57 of the rules of the Supreme Court and when the learned Judge had no jurisdiction to hear and grant the Order, or in the alternative when the appeal in question had no prospects of success whatsoever;
2. That the learned Judge erred when he granted the injunction without taking into account that the said Order of injunction had the effect of a stay of execution on the two Consent Orders settled in this Court on 14th November 2005 and 27th January 2006;
3. That the learned Judge erred to grant the Appellant an order of injunction without taking into account the 2nd Respondent's investment in the property amounting to over K5.0 billion and also that there was no status quo to maintain as the 2nd Respondent had already entered the property and altered it considerably in terms of the development of the same upon obtaining the consent orders referred to above;
4. That the learned Judge erred to grant an order of injunction when the Appellant had pleaded damages in the alternative in the writ of summons filed in the High Court on 7th February, 2000.

The brief history of this matter is that the Appellant had instituted proceedings against the 1st, 2nd, 3rd and 4th Respondents on 7th February,

2006. The claim as endorsed on the writ of summons has a number of claims. As against the 1st Respondent, the claim is for specific performance of the contract for the sale of the property known as Stand No. 19028 Lusaka, delivery of possession of the said stand and a declaration that the agreement between them was binding and enforceable.

As against the 2nd and 3rd Respondents, an injunction restraining them from doing whether by themselves, agents or otherwise any of the facts, that is to say, enter the premises and carry out any earth works or whatever works on the said stand.

As against the 4th Respondent, a declaration that the certificate of re-entry which was registered on 10th February, 2004 was null and void, a declaration that the certificate of title No. 26241 issued to the 2nd Respondent be null and void as there was a caveat on the property and that 4th Respondent had no power to issue the said certificate, a declaration that entries on the property numbers 10, 11, 12, 13, 14, 15 and 16 were null and void as they were entered without the consent of the Appellant. In the alternative, the Appellant claimed damages for the breach of the contract entered into on 23rd December, 2003.

Prior to the Appellant's action, there was an action by the 1st Respondent against the 4th Respondent and 2nd Respondent before the lands

Tribunal, where the 1st Respondent challenged the re-entries made by the 4th Respondent on the property in question and subsequent issuance of a Certificate of Title the 2nd Respondent. Following the judgment of the Lands Tribunal the 2nd Respondent appealed to this court. However, this matter was settled by consent of the parties wherein it was agreed that the judgment of the Lands Tribunal be set aside and agreed that the property in question belongs to the 2nd Respondent.

There was yet another action involving the same property and the parties there were the 1st Respondent against the 2nd Respondent, 3rd Respondent, 4th Respondent and one LOTTIE SIMFUKWE. The matter was also settled by a consent order wherein it was agreed that the property in issue being Stand No. 19029 belonged to the 2nd Respondent and that the 1st Respondent would have no further claim over the said property.

Armed with these two consent judgments, the 2nd and 3rd Respondents challenged the action by the Appellant in the court below when the matter came up for hearing on the application for an injunction. The 2nd and 3rd Respondents raised a preliminary objection based on the principle that the matter being litigated upon by the Appellant was res judicata, the issue of ownership of the property having been settled and agreed that the property in question belonged to the 2nd Respondent.

After hearing the arguments on this preliminary objection, the learned trial Judge in the court below held in favour of the objection stating that he had no jurisdiction over the matter as the same had been settled by the Supreme Court by the consent Orders of the parties. The learned Judge in the court below held that the Appellant was bound by the decision of the Supreme Court whether he was a party or not to the proceedings that decided the ownership of the property and the learned Judge dismissed the whole action.

The Appellant then applied for an Order of Interim Injunction pending appeal to a single Judge of this court pursuant to Rules 7 and 48 of the Supreme Court Rules as read with Order 29 Rule 1 of the Rules of the Supreme Court. The single Judge on 13th June, 2006 granted the Appellant an interim order of injunction restraining the Respondents by themselves, agents or otherwise from entering, working on or digging on Stand No. 19028 until the appeal is decided. This was the Order that was the subject of the Motion before us.

In our decision in the case of MANAL INVESTMENT LIMITED VS LAMISE INVESTMENT LIMITED (1) we had pointed out that in terms of Section 4 of the Supreme Court, a single Judge had no powers in terms of injunctions as the same involved a decision of an appeal or a final decision

of the matter. The effect of this is that the application for an interim injunction before a single Judge and the order granting the same were misconceived. In our decision we had bemoaned the fact that this position is bound to cause difficulties in practice as the Supreme Court does not sit everyday. That in a case of urgency, where the High Court has refused to grant an interim injunction, the aggrieved party may have no immediate remedy and by the time the appeal is heard, irreparable damage may already have been caused. Happily, the situation is no longer the same as we have since put in place arrangements for the hearing and disposal of urgent appeals.

It was for these reasons that we allowed the motion and set aside the order of the single Judge. We also ordered that the costs are to be borne by the Appellant and that the same were to be taxed in default of agreement.