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**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA
(CIVIL JURISDICTION)**



2015/HP/0006

BETWEEN:

CRUSHED STONE SALES LIMITED

PLAINTIFF

AND

THE ATTORNEY GENERAL

1ST DEFENDANT

MARA PLEASURE RESORT LIMITED

2ND DEFENDANT

BEFORE HONOURABLE MRS. JUSTICE P.C.M. NGULUBE IN CHAMBERS

FOR THE PLAINTIFF

: Mr J.B. Theu- Messrs Mwansa Phiri
and Partners

FOR THE 1ST DEFENDANT

: Ms Ndulo – State Advocate,
Attorney General Chambers

FOR THE 2ND DEFENDANT

: Messrs KBF and Partners

R U L I N G

Cases referred to:

1. Columbia Picture Industries Inc vs Robinson [1987] Ch 38
2. Finsbury and Others vs Ventriglia SCZ Judgment number 17 of 2013

Legislation referred to:

1. The High Court Act, Chapter 27 of the Laws of Zambia

This is a Ruling on the 2nd Defendant's application to discharge an Interim Injunction confirmed by this Court on 3rd March, 2015. The 2nd Defendant made this application pursuant to Order 27 rule 4 of the High Court Rules.

In the Affidavit in Support of the Application deposed by Dimitrios Monokandilos, a Director in the 2nd Defendant Company, it was advanced that the Plaintiff's Mining Licences number 7312-HQ-SML and 7313-HQ-SML in respect of the subject piece of land have since been cancelled. Produced was a true copy of a letter to that effect from the Mines Development Department.

The Deponent averred that owing to the cancellation of the mining licences, the Plaintiff Company had ceased having mining rights or any other interest in the Ngwenya Dam. That there was no machinery or equipment on the disputed land as the same had been disposed of and therefore the continued subsistence of the injunction was not warranted.

To augment the application, the 2nd Defendant filed Skeleton Arguments in which it argued that there had been a change in circumstances since the injunction was first granted. Relying on **Columbia Picture Industries Inc vs Robnson [1987] Ch 38**, the Plaintiff urged the Court to discharge the Injunction granted.

When the application came up for hearing, Learned Counsel representing the 2nd Defendant at the time, Mr Mayembe from Messrs Central Chambers relied on the Skeleton Arguments filed in support of the application.

In response to the application, Learned Counsel, Mr Theu relied on the Affidavit in Opposition and submitted that the discharge of an Injunction was at the discretion of the Court which discretion is exercised if the Injunction has served its purpose or in the event of inordinate delay.

That the Plaintiff still had a valid underlying claim despite the cancellation of the Mining Licence which the Plaintiff had appealed against and was waiting to

be heard. That if the Injunction is discharged, the Plaintiff would suffer a complete loss of its surviving assets.

It was contended that by the subject application, the 2nd Defendant was attempting to embark on a trial so as to gain advantage. That the application should be rejected as there were no circumstances warranting the discharge of the Injunction.

In reply, Mr Mayembe submitted that the application had been necessitated by a change in circumstances since the grant of the injunction. That the Plaintiff got an Injunction because of the mining licences which have since been cancelled. That the Injunction should therefore be discharged.

I have carefully considered the Affidavit evidence and the arguments advanced by both parties. The proviso to **Order 27 rule 4** stipulates as follows;

"provided that any order for an injunction may be discharged, varied or set aside by the Court or a Judge, on an application made thereto by any party dissatisfied with such order."

In **Finsbury and Others vs Ventriglia SCZ Judgment number 17 of 2013**, the Supreme Court of Zambia has agreed with the Learned Authors of the Halsbury's Laws of England by observing as follows-

"it is trite law that the Court which grants an Injunction has jurisdiction to discharge that injunction. The Learned Authors of the Halsbury's Laws of England , para 1020 have said that an application to dissolve (an injunction) ought to be made to the Court by which the injunction was granted."

This Court has the power to discharge an Injunction for cause and in this particular application the 2nd Defendants apply for the discharge of the Injunction on the basis that circumstances have changed. Namely, that the

longer saving[sic] the purpose for which this Court granted it as the purposes, for which the Respondents applied for the injunction and, consequently, the basis upon which that injunction was granted, have been rendered nugatory by the lifting of the receivership. "

The position of the Supreme Court rings true in the case in casu as I have stated above. The injunction had been granted to protect the mining rights flowing from the Mining Licences that the Plaintiff held. These rights having been extinguished by the cancellation of the Mining Licences, there remains nothing to be protected. I note that the Plaintiff's Learned Counsel argued that there still existed an underlying claim and that the Plaintiff has since appealed against the cancellation. Without delving in the merits of the case, it is apparent that whatever claims the Plaintiff had on the subject piece of land were founded on the Mining Licences and therefore, the cancellation of the Mining Licence impugns the claims. There is no running away from the fact that the Injunction was granted to maintain a status quo which has since changed, thus it is serving no purpose and accordingly ought to be dissolved.

Based on the foregoing, I discharge the Injunction granted to the Plaintiff on 3rd March, 2016.

Costs to be in the Cause.

Dated this 6th April, 2016



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P. C. M. NGULUBE
HIGH COURT JUDGE