

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA
(Civil Jurisdiction)

2016/HP/0309

BETWEEN:

NICOLAS SMITH LWANDA



PLAINTIFF

AND

OLIVER CHILUFYA

DEFENDANT

Before the Honourable Mr. Justice C.F.R. Mchenga SC

For the Plaintiff: In person

For the Defendant: In person

R U L I N G

The plaintiff seeks an injunction to restrain the defendant by himself, his agents, his servants or whosoever, from encroaching on Plot 1951/20 Kanyama, Lusaka. His application is supported by an affidavit that he has deposed.

He has deposed that he is the owner of Plot 1951/20 Kanyama, which he got from Kanyama West Land Allocation Committee. He then built a wall and house, up to roof level, on it. On 4th January 2016, the defendant, who is his neighbour, at Plot 1951/19, attempted to demolish his house

but was stopped. However, on 10th January 2016, he brought down the wall and house.

The application is opposed. The defendant deposed that he is the legal owner of Plot 1951/19 and produced a copy of an ownership form marked "OC1". He also deposed that the structure he demolished is on his property.

In his affidavit in reply, the plaintiff maintained that he bought the property from the Kanyama West Land Allocation Committee and produced an ownership form marked "NSH1". He deposed that the defendant is mistaken on the boundary between Plots 1951/19 and 1951/20.

From the evidence so far before me, I find that both parties have documentation supporting their title to either Plot 1951/19 or 1951/20. The dispute is essentially on where the boundary for the two plots lies.

In **Shell and BP (Z) Limited v Conidaris and Others [1975] Z.R. 174** our Supreme Court stated as follows:

"a Court will not generally grant an interlocutory injunction unless the right to relief is clear and unless the injunction is necessary to protect the plaintiff from irreparable injury: mere inconvenience is not enough. Irreparable injury means injury which is substantial and can never be adequately remedied or atoned by damages, not injury which can possibly be repaired."

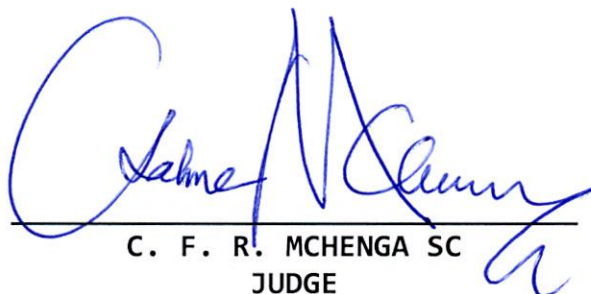
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For the plaintiff's application to succeed, I must be satisfied that he has a good arguable claim to the interest he seeks to protect and he will suffer irreparable harm if the injunction is not granted.

In this case, the plaintiff has demonstrated that there is a triable issue because he has established that he has title to Plot 1951/20, he therefore has a clear right to relief. I am satisfied the injunction is necessary to protect the plaintiff from injury that she will suffer if the defendant is allowed to continue with the construction works and that injury cannot be adequately remedied or atoned by damages. In my view, this is an appropriate case for the court to exercise its discretion to grant an interlocutory injunction in the plaintiff's favour. I therefore confirm the ex-parte injunction granted on 24th February, 2016.

Costs will be in the cause.

Delivered in chambers at Lusaka this 6th day of April, 2016.


C. F. R. MCHENGA SC
JUDGE