

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

2018/HP/0125



**B E T W E E N :**

LUSAKA UNION OF MARKETEERS  
COOPERATIVE SOCIETY

**1<sup>ST</sup> PLAINTIFF**

LILANDA MARKETEERS COOPERATIVE  
SOCIETY LIMITED

**2<sup>ND</sup> PLAINTIFF**

**AND**

LUSAKA CITY COUNCIL  
PATRICK SALUBUSA

**1<sup>ST</sup> DEFENDANT  
2<sup>ND</sup> DEFENDANT**

**Before Honourable Mrs. Justice M. Mapani-Kawimbe on the 13<sup>th</sup> day of  
February, 2018**

*For the Plaintiffs* : *Mr. M. Haimbe, Messrs Sinkamba Legal  
Practitioners*  
*For the 1<sup>st</sup> Defendant* : *Ms. B. Bulaya, Director Legal Services, LCC*  
*For the 2<sup>nd</sup> Defendant* : *In Person*

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**Cases Referred To:**

1. *Shell and BP (Z) Limited v Conidaris and Others (1985) ZR 174*

**Legislation Referred To:**

1. *High Court Act, Chapter 27*
2. *Market and Bus stations Act No. 7 of 2007*
3. *Cooperatives Act No. 20 of 1998*

**Other Works Referred To:**

1. *Halsbury's Laws of England, 1999, 4<sup>th</sup> Edition*
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**R U L I N G**

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This is the Plaintiffs' application for an Order of interim injunction. It is made pursuant to Order 27 of the High Court Rules and is supported by an Affidavit. By this application the Plaintiffs seek to restrain the Defendants from taking over Lilanda Market and imposing themselves as the new leaders.

The Plaintiffs rely on the Affidavit in Support jointly sworn by **Brian Phiri** and **Moffat Mangoni** as Vice Chairperson and Secretary of the Plaintiff associations, respectively. The deponents aver that the Defendants have blocked them from accessing their businesses, properties and offices. That on 18<sup>th</sup> January, 2018, the 2<sup>nd</sup> Defendant declared himself as the Market Master of the 2<sup>nd</sup> Plaintiff market and instructed his political party supporters to threaten and restrict the board members of the 1<sup>st</sup> Plaintiff.

The deponents further aver that the Defendants in the company of journalists went to the 2<sup>nd</sup> Plaintiff market and announced the 1<sup>st</sup> Defendant's takeover as shown in the exhibit marked "**BPMM3**." That on 19<sup>th</sup> January, 2018, the 1<sup>st</sup> Defendant

confirmed its takeover to the 2<sup>nd</sup> Plaintiff as shown in the exhibit marked "**BPMM4.**"

The deponents state that the 1<sup>st</sup> Defendant has no right of claim on its properties, business and profits. That it neither has a right to impose the 2<sup>nd</sup> Defendant as Market Master. That if the Defendants are not stopped, they will take over the market and impose themselves as the new leaders much to the irreparable damage of the Plaintiffs' shareholders, traders and general members.

The deponents contend that the 1<sup>st</sup> Defendant's actions are in breach of the Cooperatives Act and the protocol of the supervising Government agency, namely the Ministry of Commerce, Trade and Industry. The deponents aver that they have a case fit for determination at a full inquiry and pray to Court to grant them an interim injunction.

**Chibwe Chibuye**, the 1<sup>st</sup> Defendant's Market Manager swore an Affidavit in Opposition. He states that the Plaintiffs are aware of

the Market and Bus Stations Act, which provides in section 4(1) - *“The Minister or a Local Authority with the approval of the Minister may establish markets and bus stations”*; and section 5(1) - *“All markets and bus stations shall be under the control of a local authority having jurisdiction in the area in which they are situated.”*

The deponent avers that the 1<sup>st</sup> Defendant wrote a letter to the Plaintiffs based on the provisions of the Market and Bus Stations Act. That the 1<sup>st</sup> Defendant is by law the only authority recognized to run the affairs of any markets in its locality.

The deponent contends that the plaintiffs have failed to show where they derive their authority to operate or manage Lilanda market. Further, the deponent avers that the 1<sup>st</sup> Defendant is merely taking over Lilanda Market as provided by law. He prays to Court to decline the Plaintiffs’ application for an order of interim injunction as it will interfere with its management of the market.

The 2<sup>nd</sup> Defendant did not oppose the application.



I have anxiously considered the application, the affidavits and skeleton arguments filed herein. The learned authors of **Halsbury's Laws of England 4<sup>th</sup> Edition** at page 448 at paragraph 853 state that:

**".....on an application for interlocutory injunction, the Court must be satisfied that there is a serious question to be tried. The material available to the Court at the hearing of the application must disclose that the Plaintiff has real prospects for succeeding in his claim."**

In the case of **Shell & BP (Zambia) Limited v Conidaris<sup>1</sup>**, the Supreme Court held that:

**"...all the Courts need to do at the interlocutory stage is to be satisfied that there is a serious question to be tried at the hearing and that the Court has to interfere to preserve property without waiting for the right to be finally established at the trial..."**

Further, in the **Shell & BP** case, the Supreme Court held that a person seeking injunctive relief must demonstrate the following:

- "a) A clear right to relief**
- b) Irreparable damage and injury that cannot be atoned for by damages.**
- c) A tilt of the balance of convenience in the Plaintiff's favour."**

The first issue I must consider is whether on the available evidence, there is a serious question to be tried and if the Plaintiffs

are entitled to relief. The allegation against the 1<sup>st</sup> Defendant is premised on its exercise of authority under the Market and Bus Stations Act. Section 5 of the Act provides:

- “5. (1) All markets and bus stations shall be under the control of a local authority having jurisdiction in the area in which they are situated.**
- (2) A market and bus station shall be managed by:**
- (a) A local authority in that area; or**
- (b) A management board.**
- (3) A market and a bus station shall be managed and operated in accordance with the Food and Drug Act, the Public Health Act and the Weights and Measurements Act.”**

In section 13 of the Act:

- “13. (1) The Minister may in consultation with the Local Authority in whose area the market or bus station is situated, establish a management board for any market or bus station established under this Act.**
- (2) A Management board established under subsection (1) shall be a body corporate with perpetual succession and a common seal capable of using and of being sued in its corporate name and with power, subject to the provisions of this Act, to all such things as a body corporate may be law do or perform.” (underlining my own)**

From these provisions, the only entities that have control over markets are the local authorities and management boards. The Plaintiffs contend that they are established under the Cooperatives Act. Section 8 of the Act provides:

**“8. Any cooperative with ten or more members shall within a period of not more than twelve months from the date of adoption of its by-laws and subject to section 9 and on payment of the prescribed fee, be registered as a cooperative society under this Act.”**

The issue thus, is whether the Defendants can be stopped from performing a statutory function prescribed by the Market and Bus Stations Act. My firm view is that the Court cannot prevent the 1<sup>st</sup> Defendant from performing a statutory function.

In the case of **Shell & BP<sup>1</sup>**, the Supreme Court stated that:

**“A Court will not generally grant an interlocutory injunction unless a 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 for by damages, not injury which cannot possibly be repaired.”**

After carefully examining the facts of this case, I am convinced that an award for damages will adequately compensate the Plaintiffs should they succeed at trial. Further, the balance of convenience tilts in favour of the 1<sup>st</sup> Defendant, which is carrying out a statutory function.

Accordingly, I hold that this is not a proper case in which I can exercise my discretionary power to grant an interim injunction. I dismiss this application and award costs to the Defendants to be taxed in default of agreement.

Dated this 13<sup>th</sup> day of February, 2018.

*M. Mapani*  
M. Mapani-Kawimbe  
**HIGH COURT JUDGE**