

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

**2018/HP/0779**



**BETWEEN:**

**SAM MWAPELA**

**PLAINTIFF**

**AND**

**THE NATIONAL YOUTH DEVELOPMENT  
COUNCIL**

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

**THE ATTORNEY GENERAL**

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

**Before the Honourable Mrs. Justice S. M Wanjelani this 9<sup>th</sup> day  
of May, 2018 in Chambers.**

***For the Plaintiff: Mr. M. Chipanzya, Messrs ICN Legal  
Practitioners***

***For the Defendant: N/A***

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## **RULING**

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**Cases referred to:**

1. *Jim Gondwe V BP (Z) Limited (1995-1997) ZR 178.*
2. *American Cyanamid V Ethicon (1975) AC 396*
3. *Shell and BP (Z) Ltd V Conidaris and Others (1975) ZR 174*
4. *Turnkey Properties V Lusaka West Development Company (1984) ZR 85.*
5. *Hilary Bernard Mukosa V Michael Ronaldson (1993-1994)*

**Legislation and other material referred to:**

1. *High Court Rules, Chapter 27 of the Laws of Zambia*
2. *Halsbury's Laws of England*



The Plaintiff seeks an injunction to restrain the 1<sup>st</sup> Defendant by itself, its agents, servants or otherwise from claiming and/or taking possession of motor vehicle **Mitsubishi Triton Registration Number, ALX 2780**, pending the hearing and determination of this matter or until further order of the Court. The application was filed pursuant to **Order XXVII Rule 4** of the High Court Rules.

The Plaintiff commenced this action through a Writ of Summons and Statement of Claim on 19<sup>th</sup> April, 2018, seeking, inter alia,

- i. *a declaration that the Notice of expiry of contract dated 7<sup>th</sup> March 2018 by the Permanent Secretary Ministry of Youth Sport and Child Development was ultra vires Clause 3.4.1. of the 1<sup>st</sup> Defendant's Grievance Procedure and Disciplinary Code;*
- ii. *a declaration that the Plaintiff's contract of employment is deemed to have been extended pursuant to the 1<sup>st</sup> Defendant's Grievance Procedure and Disciplinary Code.*
- iii. *an Order for the payment of the sum of K550, 980.00 being gratuity;*
- iv. *a declaration that the Plaintiff is entitled to purchase his personal to holder motor vehicle **Mitsubishi Triton Registration Number ALX 2780** at the end of his employment with the 1<sup>st</sup> Defendant pursuant to **Regulation 47(i)(a)** of the 1<sup>st</sup> Defendants' Terms and Conditions of Service.*
- v. *an injunction to restrain the 1<sup>st</sup> Defendant from taking possession of the subject motor vehicle;*
- vi. *interest, and costs.*



The Plaintiff filed an Affidavit in Support of the application in which he averred that he was employed by the 1<sup>st</sup> Defendant on 13<sup>th</sup> March, 2015, for a fixed 3 year contract, that he was entitled to a personal to holder motor vehicle in line with his Conditions of Service. He added that the 1<sup>st</sup> Defendant Council was dissolved in July 2015 and on 27<sup>th</sup> February, 2018, the Plaintiff wrote to the Permanent Secretary for contract renewal, and that on 7<sup>th</sup> March 2018, he received a letter of notice ending his Contract of Employment. He added that on 29<sup>th</sup> March 2018, he wrote to the Permanent Secretary to authorise the purchase of the personal to holder motor vehicle and had a meeting with the Director, Human Resource and Administration, Ministry of Youth Sport and Child Development who advised him that the Government had reversed the sale of motor vehicles to Public Service employees. The Deponent contends that this is not applicable to the 1<sup>st</sup> Defendant as a letter from the Permanent Secretary, Public Service Management Division had advised the non-applicability of the Civil Service Conditions of Service to the 1<sup>st</sup> Defendant as per exhibit "SM7", and thus demands to be sold the vehicle at the end of his 3 year contract with the 1<sup>st</sup> Defendant.

During the hearing for the Plaintiff relied on the Affidavit in Support of the application and argued that there are serious issues to be tried, that the Plaintiff would suffer irreparable injury as he has been using the vehicle for the last three years and relied on the case of **Jim Gondwe V BP (Z) Limited**<sup>(1)</sup>. He further contended that the



balance of convenience lay with the Plaintiff and further referred to the injunction principles in the cases of **American Cyanamid V Ethicon**<sup>(2)</sup>, **Shell and BP (Z) Ltd V Conidaris and Others**<sup>(3)</sup> and **Turnkey Properties V Lusaka West Development Company**<sup>(4)</sup>.

I have considered the application before me, the submissions by Counsel and the applicable principles regarding the granting of injunctions enunciated in the cited cases.

In my view, the issue at the centre of this application is whether there are serious issues regarding the Plaintiff's entitlement to purchase the personal to holder motor vehicle and I am cognisant of the fact that it is not appropriate to go in to the merits of the claim at this point. The Plaintiff has alluded to his conditions of service as entitling him to purchase the vehicle and in particular **Regulation 47(i)(a)** exhibited as "**SM2**" entitles him to purchase the personal to holder vehicle. He further contends that the 1<sup>st</sup> Defendant Council Chairperson in the Minutes marked "**SM3**" communicated to him that he was entitled to purchase the vehicle at the end of the contract period.

In my view, the referred documents as the basis for the claim to purchase the vehicle do not state the position as alleged by the Plaintiff and the Chairman referred to a survey to be done in relation to procuring vehicles which could be given to managers at the end of the contract period, while **Regulation 47 (i)(a)** merely states that the Council Secretary is entitled to a personal to holder



motor vehicle. There is no document specifically stating that the Plaintiff is entitled to purchase the vehicle or an offer letter. Further, the Plaintiff's "Employment Contract and Conditions of Service" exhibited as "**SM1**" under "General Provisions" state that any clause which is *ultra vires* the terms and conditions of public service workers shall be considered null and void ab-initio.

Based on the above facts, I have sought guidance from the case of **Shell and BP (Z) Ltd V Conidaris and Others**<sup>(3)</sup>, where the Supreme Court stated inter alia that:

***"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, were inconvenience is not enough."***

Similarly in the case of **Hilary Bernard Mukosa V Michael Ronaldson**<sup>(5)</sup>, the Supreme Court held that:

***"any Injunction would only be granted to a Plaintiff who established that he had a good and arguable claim to the right which he sought to protect."***

And further Paragraph 953 of the **Halsbury's Laws of England** state:

***"on an application for an Injunction in aid of a Plaintiff's alleged right, the Court will usually wish***



***to consider whether the case is so clear and free from objection on equitable grounds that it ought to interfere to preserve the property without waiting for the right to be fully established.”***

Given the facts of this case and guided as above, I find that the Plaintiff has not established that he has a good and arguable claim and his right to relief is clear. This matter is distinguishable from the **Jim Gondwe V BP<sup>(1)</sup>** case cited by the Plaintiff's Counsel as in the latter case, the Appellant had been offered the vehicle as was customary in that institution and money deducted from the Appellant's terminal benefits.

In addition, the Plaintiff has not demonstrated what irreparable injury he will suffer if the injunction is not granted, as defined in the case of **Shell and BP (Z) Ltd V Conidaris and Others<sup>(3)</sup>**

***"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.”***

As the Plaintiffs' matter has failed on the two out of the three tests to be considered in granting an injunction, I find it unnecessary to consider the aspect of balance of where convenience lies.

Thus on the totality of this matter, taking into account the principles governing injunctions and the authorities cited herein as applicable to the facts of this case, I find that this is not an



appropriate case in which I can exercise my discretion to grant the Interim Injunction as sought by the Plaintiff.

The application is consequently declined.

Leave to appeal is granted.

**Dated at Lusaka this 9<sup>th</sup> day of May, 2018.**



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**S.M. WANJELANI  
JUDGE**