

IN THE HIGH COURT FOR ZAMBIA
INDUSTRIAL RELATIONS DIVISION
HOLDEN AT LUSAKA

COMP/IRCLK/423/2015

BETWEEN:

REVON NGEZI

AND

ZESCO LIMITED



COMPLAINANT

RESPONDENT

Before Hon. Judge M. K. Chisunka

APPEARANCES:

For the Complainant: Ms. T. Sakala – Frazer & Associates.

For the Respondent: Mr. P. Mulenga – In-house Counsel.

R U L I N G

Cases Referred to:

- 1. Turnkey Properties v. Lusaka West Development Company Ltd & Zambia State Insurance Corporation Ltd (1984) ZR 85.*
- 2. Shell and BP v. Conidaris (1975) ZR 174.*
- 3. Zambia State Insurance Corporation Ltd v. Dennis Mulope Mulikelela (1990) ZR.*

A. Introduction

1. This ruling decides on interlocutory application for an order of interim injunction to restrain the Respondent from evicting the

Complainant and grant him access to House No. 38, New Site, Siavonga until the determination of this matter.

2. The Applicant is the Complainant in the underlying cause and the Respondent is a former employer of the Applicant.
3. The basis upon which this application is made is contained in the Affidavit filed in support of this application on 6th October, 2016.

The Evidence

4. The Applicant's Affidavit , sworn by himself, disclosed that:

- (i) *He is the Complainant in the underlying cause for unlawful termination and breach of contract of employment.*
- (ii) *That this action is currently mid-trial before this Court.*
- (iii) *That the Respondent has, on numerous occasions, threatened to evict him from his place of abode on account that the same is company property and has, in this respect, issued a notice to that effect which notice is exhibited as "RN1" to the Affidavit in Support (letter dated 30th October, 2015).*
- (iv) *That despite the matter being in Court and pending determination, the Respondent did on 30th September and 5th October, 2017, respectively, attempt to forcibly and without notice evict him from the said residence.*
- (v) *That he has been greatly inconvenienced by these actions by the Respondent, more so that he had a one month old*

child and cannot find any alternative accommodation as he has yet to be paid his dues by the Respondent.

(vi) That unless the Respondent was compelled to grant him access and subsequently restrained from evicting him, he will suffer and continue to suffer an injustice as he had been left with no abode and will be destitute.

5. Counsel for the Applicant filed a list of authorities and Skeleton Arguments in support of the application.
6. The Respondent has opposed the application for an order of injunction through the list of authorities filed into Court on 26th October, 2017 and his oral argument in Court.
7. The Respondent submits that the application does not demonstrate that there was a serious question to be tried and whether the Complainant had high prospects of succeeding in the underlying cause.
8. It was submitted, further, that mere inconvenience was not enough to obtain an injunction. That the only issue brought out by the Complainant was that he wanted to maintain the status quo – but does not address the balance of convenience.
9. Both parties in their written submissions referred to authorities they deemed relevant to support their positions. I will proceed to review the Law with regard to injunctions.

General Principles Guiding Grant of Injunctions

10. **Injunctions** whether interim, interlocutory or final are equitable remedies that are granted at the Court's discretion. Interlocutory injunctions prohibit defendants from doing certain defined conduct for a set period of time. The purpose is to protect the moving party against injury by violation of his legal rights, for which he could not be adequately compensated by damages or which could not be cured (because the moving party is unable to collect damages) if the matter were to be resolved in the moving party's favour at trial.
11. I find the following authorities instructive on the general principles of law to be considered when granting injunctions:
- (i) ***Turnkey Properties v. Lusaka West Development Company Ltd and Zambia State Insurance Corporation Ltd (1984) ZR 85***, where it was stated that:
 - (a) An interlocutory injunction is appropriate for the preservation of a particular situation pending trial;
 - (b) An interlocutory injunction should not be regarded as a device by which an applicant can attain or create new conditions favourable only to himself.
 - (c) In an application for Interlocutory Injunction the possibility of damages being an adequate remedy should always be considered.
 - (ii) **Shell & BP Ltd v. Conidaris & Others** where it was stated that:

“A Court will not generally grant an interlocutory injunction unless the right to relief is clear and unless it is 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 the damages, not injury which cannot be possibly repaired.”

(iii) **Zambia State Insurance Corporation Ltd v. Dennis Mulope Mulikelela (1990) ZR**, where it was stated that:

“...of course, in order to entitle the Plaintiffs to an Interlocutory Injunction, though the Court is not called upon to decide finally on the rights of the parties, it is necessary that the Court should be satisfied that there is a serious question to be tried at the hearing, and that on the facts before it there is a probability that the Plaintiffs are entitled to relief.”

My Decision


12. I have had the opportunity to hear both sides on the matter. The Affidavit evidence in support of the injunction was predicated on the fact that the Complainant was challenging his termination of employment. Further that he was currently residing in the house belonging to the Respondent and he had been threatened with eviction even without having been paid his terminal dues.
13. The Respondent opposes the application for an injunction on the basis that the Complainant has not shown that if evicted from the house, he would suffer irreparable damage and this falls short of the test required to sustain the application for an injunction.

14. On the basis of the evidence before me, I am satisfied that the Complainant has not demonstrated to the Court that he would suffer irreparable damage if the injunction is not granted. What is apparent, however, is that he would suffer inconvenience if he is evicted from the house.
15. With regard to the other limb of the application concerning access to the house, the evidence on record shows that the Complainant was allocated that house as an incidence of his employment with the Respondent. The Complainant's services have since been terminated. Even though he has challenged the termination in this Court I see no justification for him to remain in that house. It is clear that he would be inconvenienced if evicted, but mere inconvenience is not a ground upon which an interim injunction should be granted.

ORDERS

16. Given what I have said above, I refuse to allow the application for interim injunction and I accordingly dismiss it.

Delivered at Lusaka this.....day of January, 2018.


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M. K. CHISUNKA 3 JAN 2018
HIGH COURT JUDGE

