

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

2019/HP/1531

BETWEEN

**EVANCE SEKE
VINCENT LUKEUSAHA
GEVIOUS PHIRI
SIMON SHAWA
PETER MUSHANGA
LEON SHAWA
ABRAM MAKOMBE
CLEMENT YUYI MAZIKE**



**1ST PLAINTIFF
2ND PLAINTIFF
3RD PLAINTIFF
4TH PLAINTIFF
5TH PLAINTIFF
6TH PLAINTIFF
7TH PLAINTIFF
8TH PLAINTIFF**

AND

**ROBERT PHIRI
CADASTRE**

**1ST DEFENDANT
2ND DEFENDANT**

BEFORE HON. JUSTICE ELITA PHIRI MWIKISA

**FOR THE PLAINTIFFS: MS. G. KASOMA LEGAL AID COUNSEL OF
LEGAL AID BOARD**

**FOR THE 6TH PLAINTIFF: MR. SIMUKONDA, MESSRS KANFWIMBE &
ASSOCIATES**

FOR THE 1ST DEFENDANT: IN PERSON

FOR THE 2ND DEFENDANT: NIL

RULING

Cases Referred To:

1. *Hillary Bernard Mukosa v Michael Ronaldson* (S.C.Z
Judgment No. 7 of 1993).

2. *Shell & BP Zambia Limited v Connidaris and Others* (1975) ZR 174.
3. *Preston v Luck* [1884] 27 Ch D 497.
4. *American Cyanamid v Ethicon* [1975] AC 396.

This is the plaintiff's application for an order of interim injunction made pursuant to Order XXVII of the High Court Rules of the High Court Act Chapter 27 of the Laws of Zambia, dated 25th September, 2019. The said application is supported by an affidavit filed on the same date deposed to by Evance Seke, the 1st plaintiff herein.

He deposed that he is the occupier of land on which a small exploration mine is situated as shown by exhibit marked "ES1". That in the year 2010, he discovered some peculiar stones on the land in issue and that some time in 2012, he met with the 4th plaintiff who requested for some samples of the said stones which samples were given. The 1st plaintiff deposed that it was discovered that the said peculiar stones were precious stones.

It was also deposed that the 7th plaintiff herein suggested that they should all work as a community and obtain a mining licence and that the 1st plaintiff then contacted the 3rd and 8th plaintiffs with a view to obtain consent from the Chief. The 1st plaintiff deposed that all the plaintiffs and 8 other people, which people

included the defendant, came together and decided to trade under the name of Kamuoma Mining Company as shown by exhibit marked "ES2". It was also deposed that the Chief granted them consent to register the small exploration mine.

It was deposed further that in September, 2012, the defendant and the 5th plaintiff began the process of registration at PACRA and that in November, 2012, the 5th plaintiff informed the community that the issuance of mining licences was closed at Ministry of Mines Cadastre Unit to facilitate the enactment of the new mining law. It was also deposed that after the enactment of the new law, the 5th plaintiff handed over all documents relating to the registration formalities to the 1st defendant who was more conversant with them. It was deposed further that when the licence came out on 18th April, 2016, the 5th plaintiff was shocked to discover that it was not in the name of Kamuoma Mining Company but in the name of the 1st defendant as shown by exhibit marked "ES4". The 1st plaintiff deposed that when he inquired from the defendant why the said licence was in his name, the defendant told him that he was advised by the officers from the Cadastre unit to put it in his name as it was a quicker way of doing it. That the defendant also informed the 5th plaintiff that it was not complicated to change the licence into the names

of Kamuoma Mining Company and that when the community was informed of this, they did not object to the issue.

It was deposed that when efforts to get the defendant to change the mining licence to Kamuoma Mining Company proved futile, the 5th plaintiff reported back to the community and that it was resolved that the matter be taken to the Ministry of Mines where all parties including the defendant were summoned. It was deposed that when the defendant refused to change the licence, the director of the Cadastre unit held on to the licence and advised the community to take the matter to Court.

It was deposed that the defendant has however, started bringing foreign nationals on the 1st plaintiff's land where the said mine is located purporting to be the owner in an effort to sell the said mine.

The 1st plaintiff deposed that if the defendant is not restrained from interfering with the said mine, the plaintiffs will suffer irreparable damage.

On the other hand, the 1st defendant filed an affidavit in opposition dated 29th October, 2019, deposed to by Robert Phiri, the 1st defendant herein. He deposed that the piece of land being claimed by the plaintiffs; (16478-HQ-LEL) belongs to Metalco

Industries while the piece of land which belongs to him is numbered 20607-HQ-SEL as per information from the 2nd Respondent.

It was also deposed that the document exhibited as "ES2" in the affidavit in support appears strange as the original copy from the Chief was handwritten and date stamped 9th November, 2012, but that the same was later stolen and the matter was reported to the police. The 1st defendant went on to depose that the plaintiffs did not contribute financially towards the registration and that it is true that the 5th plaintiff and himself were tasked to register Kamuoma Mining Company.

The defendant also deposed that the 2nd defendant showed the 1st defendant that the portion being claimed by the plaintiffs was not theirs but belonged to Metalco Industries and that the 1st defendant informed the plaintiffs about that development. The 1st defendant deposed that it was at that point that the 1st defendant abandoned the process of registering Kamuoma Mining Company and embarked on securing his own registration of a small scale mining exploration company as shown by exhibits marked "RP1-RP3" which are an offer letter from the Ministry of Mines and Minerals Development, receipt for payment and a plan showing the area for Metalco Industries which the plaintiffs are claiming.

The 1st defendant also deposed that the coordinates for the area occupied by the 1st plaintiff (16478-HQ-LEL) are completely different from those occupied by the 1st defendant herein and that the same were done by a qualified geologist as can be seen by exhibit marked "RP7 and RP8". He went on to depose that the 2nd defendant, in 2017, requested the plaintiffs and the 1st defendant to go to the 2nd defendant's offices for verification purposes but that the plaintiffs failed to attend the meeting.

That between July and August 2019, the verification was done and the confirmation was ascertained that area 20607-HQ-SEL belonged to the 1st defendant though the plaintiffs insisted that the same be changed to Kamuoma Mining Company. That the 2nd defendant advised the plaintiffs that it was impossible to change coordinates on the system and that the plaintiffs' demands were unattainable.

The 1st defendant deposed that due to the arrogance exhibited by the plaintiffs during the meeting at the 2nd defendant's offices, the 1st defendant feared to collect the original copy of the licence issued to him dated 18th April, 2016.

The 1st defendant deposed that he had not been to both areas; that is 16478-H1-LEL being claimed by the plaintiffs and 20607-

HQ-SEL owned by him, since the meeting held at the 2nd defendant's office in 2016.

The 1st defendant also deposed that contrary to paragraph 24 in the affidavit in support, the investors did not go to buy the mine but instead to view the area for possible assistance and investment opportunities. He deposed that the investors got the coordinates of the area and discovered that the area belongs to Metalco Industries and not Kamuoma Mining Company or himself.

The 1st defendant sought the indulgence of this Court to dismiss the application with costs.

When the matter came up for hearing on 24th March, 2020, both Counsel on behalf of the plaintiffs and the defendants submitted that they would be relying on their affidavits dated 25th September, 2019, and 29th October, 2019, respectively.

I have carefully considered the affidavit evidence in this matter. In an application for an interim injunction, the Court should satisfy itself that there is a serious question to be tried at the main trial and that on the facts before it the plaintiff is entitled to a right to relief. In the case of **Hillary Bernard Mukosa v**

Michael Ronaldson (S.C.Z Judgment No. 7 of 1993)¹, it was held that:

“An 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.”

Further, it is trite law that if the Court finds that there is a serious question to be tried on the merits of the substantive claim, the Court should consider whether the plaintiff will be adequately compensated by an award of damages at trial. In the case of **Shell & BP Zambia Limited v Connidaris and Others (1975) ZR 174**² the Supreme Court held, inter alia, that:

“(vi) 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 for by damages, not injury which cannot possibly be repaired.

(vii) Where any doubt exists as to the Plaintiff's rights or if the violation of an admitted right is denied the Court takes into consideration the balance of convenience to the parties. The burden of showing the greater inconvenience is on the Plaintiff.

In the case in casu, the plaintiffs have argued that the 1st plaintiff is in occupation of the land in issue which is suspected of having precious stones. It was also deposed that the 1st defendant got a licence from the Ministry of Mines in his names and not the names of Kamuoma Mining Company as agreed by the community. The 1st defendant has argued on the other hand that

the piece of land that the plaintiffs are claiming actually belongs to another company (Metalco) and that he therefore abandoned the registration process and went ahead to apply for a licence in his personal capacity on another piece of land, which land is not the one being claimed by the plaintiffs herein.

As stated in the ***Shell & BP Zambia*** case above, where any doubt exists as to the Plaintiff's rights or if the violation of an admitted right is denied, the Court takes into consideration the balance of convenience to the parties. The burden of showing the greater inconvenience is on the Plaintiff.

The plaintiff herein has exhibited letters offering him land as well as consent from the Chief dated 2012, allowing Kamuoma Mining Company to explore the chieftom. The 1st plaintiff also exhibited a certificate of incorporation in the names of Kamuoma Mining Limited dated 28th June, 2018.

The record also shows that the 1st defendant herein admitted that the 5th plaintiff and the 1st defendant were tasked to obtain a licence from the Ministry of Mines. However, the licence on record is in the names of the 1st defendant and not Kamuoma Mining company. I therefore find that there is a serious question to be tried at the main trial as the plaintiffs allege that the licence obtained by the 1st defendant relates to the land in issue.

In the case of **Preston v Luck** [1884] 27 Ch D 497³ Cotton LJ

had this to say:

“The object of an interim injunction is to keep things in status quo, so that if at the hearing, the plaintiffs obtain a judgment in their favour, the defendants will have been prevented from dealing in the meantime with the property in such way as to make that judgment ineffectual.”

The plaintiffs herein have alleged that the 1st defendant was seen taking foreign nationals on the land in issue in an effort to sell the same. The 1st defendant on the other hand denied that the investors went there to buy the mine but to view the area for possible assistance and investment opportunities. He also deposed that the investors actually got coordinates and discovered that the area belongs to Metalco Industries and not the plaintiffs.

I find that there are serious issues to be determined at the main trial as held in the case of **Preston v. Lucky** supra.

I am therefore of the considered view that the status quo be maintained in relation to the land in issue so that if after the hearing, the plaintiffs obtain a judgment in their favour, the defendants will have been prevented from dealing with the property in such way as to make that judgment nugatory. I am also of the considered view that this will not prejudice the 1st

defendant in any way as he has stated that he has not been to the land in issue since 2016.

In light of the above, I hereby confirm the ex parte order of interim injunction earlier granted to the plaintiffs on 31st October, 2019.

Leave to appeal is granted.

Delivered at Lusaka this 28th day of May 2020



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ELITA PHIRI MWIKISA
HIGH COURT JUDGE