

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

2018/HP/1546

BETWEEN

JAVANS LIMITED

AND

MARIANESH ENTERPRISES LIMITED

MARIA CHIPUNGU

EMMANUEL MBASHI

DANNY KACHALI (T/A BENE SOLUTIONS)

PASCO MUSONDA

(T/A AMAPALO AGRO & GENERAL DEALERS)

OBVIOUS KABINDA

ALLAN SINKAMBA



PLAINTIFF

1<sup>ST</sup> DEFENDANT

2<sup>ND</sup> DEFENDANT

3<sup>RD</sup> DEFENDANT

4<sup>TH</sup> DEFENDANT

5<sup>TH</sup> DEFENDANT

6<sup>TH</sup> DEFENDANT

7<sup>TH</sup> DEFENDANT

**Before the Honorable Lady Justice C. Lombe Phiri in Chambers**

*For the Plaintiff* : *Mr. M. Mulele – Messrs - G.M. Legal Practitioners*

*For the Defendants* : *N/A*

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**R U L I N G**

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## **CASES REFERRED TO:**

- 1. Afritec Asset Management Company Limited and CPD Properties Limited vs The Gynae and Antenatal Clinic Limited Selected Judgment No. 11 of 2019*

## **INTRODUCTION**

This is an application by the Plaintiff for an Interim Injunction to restrain the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Defendants by themselves, their servants, agents or whosoever from collecting any further Agro VISA Cards from any farmers in the District of Chililabombwe until the final determination of the matter.

## **BACKGROUND**

The Plaintiff herein took out a Writ of Summons wherein he claimed for Damages for loss of business arising from the 1<sup>st</sup> to 7<sup>th</sup> Defendants to collect and withhold farmers VISA Cards as a way of preventing farmers from procuring farming inputs from the Plaintiff.

In the Affidavit in support sworn by one Richard Mulenga. It was deposed that despite the Ministry of Agriculture and Smart Zambia Restraining all Agro Dealers from holding onto the farmers Agro Visa Cards, the Defendants under an unregistered name of RIA AGRO have collected over 400 farmers Agro VISA Cards from farmers to disadvantage the Plaintiff and other Agro Dealers /competitors from conducting business with the said farmers and are in possession of pin codes for all farmers Agro Visa

Cards which were availed by all District Agriculture Officers to all Agro Dealers throughout the Republic of Zambia.

In the Affidavit in opposition to the Application for an Interim Injunction, it was deposed by one Emmanuel Mbashi on behalf of the 1<sup>st</sup> Defendant that the Plaintiff has not told the Court the source of the list under exhibit RM4 whose cards are purportedly held by the Defendant. Further that the Plaintiff has not shown the Court that the said Agro cards are being kept by the Defendant. The Defendant denied having connived or collected Farmer Agro Visa Cards from any farmer.

## ANALYSIS

In the case of **Afritec Asset Management Company Limited and CPD Properties Limited vs The Gynae and Antenatal Clinic Limited Selected Judgment No. 11 of 2019** <sup>(1)</sup> the court held that the following questions arise for the grant of an Interim injunction that:

- (i) *Is there a serious question to be tried;*
- (ii) *Would damages be adequate compensation to the Plaintiff for interim loss pending trial; and,*
- (iii) *Does the balance of convenience lie in granting the interim injunction or in refusing to grant it?*

In the matter in casu, on the question whether or not there is a serious question to be tried, I took time to look at the main claim in the matter. The Plaintiff's claim is for Damages for loss of business arising from the 1<sup>st</sup> to 7<sup>th</sup>

Defendants to collect and withhold farmers VISA Cards as away of preventing farmers from procuring farming inputs from the Plaintiff. Upon reading the originating process, it is clear that the Plaintiff is challenging the authority by the 1<sup>st</sup> to 7<sup>th</sup> Defendants to collect and withhold farmers VISA Cards. The details as to whether the Defendants had authority to do so can only be determined upon the Court considering evidence in the main matter and looking into the rights and obligations of the parties. I therefore agree to this extent without looking at the merits of the issues raised in the pleadings that there is a question to be tried.

Having found that there is a serious question to be tried I now turn to consider whether this is a case where damages would adequately atone for any injury suffered. The Plaintiff in their own Writ claim “damages” as one of the reliefs sought. Without splitting any hairs this is a clear admission by the Plaintiff that damages would suffice. On that score alone I would therefore conclude that this is not a case suitable for the grant of an injunction.

In view of the foregoing, the ex parte injunction sought is denied. Costs ordered in the cause.

Leave to appeal granted.

**Delivered at Lusaka this 30<sup>th</sup> day of September, 2020.**



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**C. LOMBE PHIRI**  
**JUDGE**