

## EDWARD ZULU AND ZIMCO PROPERTIES LIMITED

SUPREME COURT  
LEWANIKA, J.S.

22<sup>ND</sup> JUNE, AND 4<sup>TH</sup> AUGUST, 2000  
APPEAL NO. 126/99

### Flynote

Civil Law - Interlocutory injunction - question of balance of convenience - whether taken into consideration in refusing injunction.

Interlocutory injunction - whether court should delve into main issues.

### Headnote

The appellant was employed by the respondent till his summary dismissal on 30<sup>th</sup> September, 1998. Sometime in April, 1996 and July 1997 the appellant was granted a loan by the respondent totalling K21,380,000.00 to purchase the house in question under the respondents home ownership scheme. Clause 3 of the respondents home ownership scheme provided that once an employee left employment, the loan had to be repaid immediately. Following his dismissal the appellant was told to pay the balance immediately or vacates the house. The appellant's application for an interim injunction to restrain the respondent from evicting him from the house in question was refused. On appeal, it was argued that the court had misdirected itself by delving into in the main issues in the dispute. It was also argued that the court did not consider the balance of convenience between the parties.

### Held:

In considering the appellant's application for an injunction the lower court fell into error in that it took into account the merits of the main action between the parties which can only be determined at the trial. The injunction is granted as prayed for pending the determination of the main action.

For the Appellant In person  
For the Respondent N. Mutti, of Lukona Chambers

### Judgment

**LEWANIKA, J.S.**, delivered the judgment of the court.

This is an appeal against the decision of a judge of the High Court refusing the appellant an interlocutory injunction restraining the respondent from evicting the appellant from house No. B7/68/14 Kalingalinga in Lusaka.

The appellant instituted proceedings by way of writ of summons against the respondent claiming inter alia for:-

1. Damages for wrongful/unlawful dismissal and a declaration that the dismissal of the appellant from his employment on 21<sup>st</sup> September, 1998, was null and void.
2. A declaration that house No. B7/68/14 Kalingalinga purchased by the appellant out of a loan obtained from the respondent is or belongs to the appellant.
3. An order that the appellant do continue to pay the loan obtained from the respondent according to the loan agreement.
4. An injunction restraining the respondent from evicting the appellant from house No. B7/68/14, Kalingalinga.

The facts before the learned trial Judge were not in dispute and they were that the appellant was employed by the respondent till his summary dismissal on 30<sup>th</sup> September, 1998. Sometime in April, 1996 and July, 1997, the appellant was granted a loan by the respondent totalling K21,380,000.00 to purchase the house in question under the respondent's home ownership scheme. Clause 3 of the respondent's home ownership scheme provided as

follows:

3.0."In the event of the employee leaving employment of the company during the validity of the loan, the balance loan plus any accrued interest shall become repayment immediately, or in accordance with the terms of the mortgage Deed, if not the company will take possession of the property. The company will take appropriate action to dispose of the property as it deems fit to realise the amount due including expenses thereof."

Following his dismissal from employment the respondent on 22<sup>nd</sup> October, 1998, wrote to the appellant giving him notice up to 30<sup>th</sup> October, 1998, to either pay the balance of K19,027,013.67 outstanding on the house loan or vacate the house. This letter prompted the appellant to institute these proceedings. The appellant's application for an interim injunction to restrain the respondent from evicting him from the house in question was refused by the learned trial Judge, hence this appeal.

The appellant filed two grounds of appeal namely:

1. That the trial court misdirected itself in law by delving into the main issues in dispute instead of confining itself with the issues concerning the injunction.
2. That the court below did not consider the balance of convenience between the parties, a factor that courts have always considered in all applications for an injunction.

At the hearing of the appeal the appellant relied on the heads of argument filed by his former Advocates and likewise Counsel for the respondent relied on the heads of arguments that she had filed. We have considered these arguments as well as the ruling of the learned trial Judge. We note from the ruling of the learned trial Judge that in considering the appellant's application for an injunction she fell into error in that she took into account the merits of the main action between the parties which can only be determined at the trial. For that reason we would allow the appeal and grant the appellant the injunction as prayed for pending the determination of the main action. We make no order as to costs.