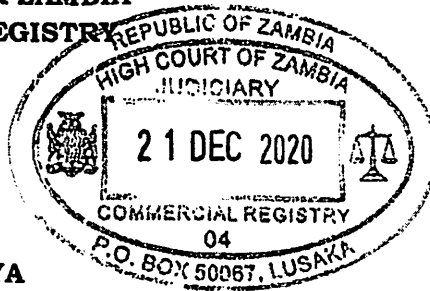


IN THE HIGH COURT FOR ZAMBIA  
AT THE COMMERCIAL REGISTRY  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)

2020/HPC/0960



BETWEEN:

MALCOM MISHECK KAUYA  
LUMBA NKAUSU

FIRST PLAINTIFF  
SECOND PLAINTIFF

AND

NATIONAL HOUSING EMPOWERMENT FUND LIMITED DEFENDANT

Before the Honourable Mr Justice K. Chenda on 21<sup>st</sup> December 2020.

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**EX TEMPORE RULING**

*On Application for an Interlocutory Injunction*

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I have **CLOSELY STUDIED** the documents in this application and deemed it necessary to invoke the provisions of Order 30 Rule 6A of the **High Court Rules** as amended by Statutory Instrument No. 58/2020 to deal with the application notwithstanding the unexplained absence of the parties today. After a **CAREFUL CONSIDERATION** thereafter, my decision is as follows.

In *Kekelwa Samuel Kongwa v. David Nkhata* (Appeal No. 102/2013 at p. 13-14), the Supreme Court guided that pleading for damages or other monetary relief in the originating process is acknowledgement that such relief would serve as adequate compensation and that there is no irreparable injury to be suffered without an interlocutory injunction. The Supreme Court further guided that where there is a plea for such relief, the burden is on the applicant for the injunction to prove that the responding party has no financial capacity to satisfy the damages or monetary relief sought.

In the case before Court, perusal of the originating process shows that not only do the Plaintiffs seek damages (relief no. (iv) but they also seek monetary awards (relief no. (ii).

I have anxiously searched the body of evidence led by the Plaintiffs in this application and found no proof or even a bare averment that the Defendants' would be unable to meet any damages awarded and/or monetary sum judgment if the Plaintiffs succeed in this action.

The end result is that I am bound by *stare decisis* to refuse this injunction application which I hereby do. Costs shall be in the cause.

Dated this 21<sup>st</sup> day of December 2020



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**K. CHENDA**  
Judge of the High Court

To: M. K. Achiume & Associates