

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

(Civil Jurisdiction)

2025/HP/0722



BETWEEN:

YAOLIN SHEN

*(Suing in his capacity as Secretary General of the
Chinese Chamber of Commerce in Zambia)*

PLAINTIFF

AND

NEWS DIGGERS MEDIA LIMITED

DEFENDANT

BEFORE HON. JUSTICE E. P. MWIKISA

*For the Plaintiff: Ms. C. Mwambazi with Mr. J. Chizu of JPS-Y
Associates*

✓ *For the Defendant: Mr. M. Nchito S.C. with Mr. C. Hamwela and Mr.
A Malipilo of Nchito*

RULING

Cases referred to:

1. *Fraser v. Evans* (1969) 1 Q B 349, 360
2. *Shamwana v. Mwanawasa* (1993 – 1994) ZR 149 (HC) 153
3. *Sata v. Chanda Chimba* (2010/HP/1282)

Works referred to:

1. *Zambia Civil Procedure – Community and Case, Vol 1, Patrick Matibini
Lexis Nexis, 2017*

1. Introduction and Background.

- 1.1 This is the plaintiff's application for an order of interlocutory injunction pursuant to order 27 rule 4 of the High Court Act (Rules) Cap 27 of the Laws of Zambia. The application is supported by an affidavit sworn by one Yaolin Shen, (suing as the Secretary General of the Chinese Chambers of Commerce in Zambia), herein after referred to as "CCCZ". He deposed therein that on or about 20th May, 2025, the defendant published on its social media page on Facebook a trailer or preview of a purported documentary entitled "The Chinese Investment in Zambia: "The good, the bad and the dangerous".
- 1.2 That the preview or trailer which is approximately 1 minute and 55 seconds long is a promotional build up of a purported documentary or programme that the defendant intends to publish on Friday, 23rd May, 2025. That the said footage provides an audio narration as follows:

a.....“they built our airports or roads schools and hospitals. They brought their culture, language, their food. They gave a face lift to our country. But they also brought something else....”

- 1.3 That after this short opening, the preview proceeds to depict images and videos of abuse of labour, water pollution and flooding of areas, arrests, violence, Harassment and fights; and abuse that has led to deaths.
- 1.4 That further the video preview among others, carries an updated publication from the News Diggers Newspaper with a heading reading as follows:

“Blood Copper – How the sensele rescue turned into a mining operation financed by the Chinese protected by politicians”.
- 1.5 That the preview, it’s images and auditory narration does, among other vices, depict practices of labour abuse, pollution of water and national resources, industrial accidents, arrests of Chinese people and various other unflattering illegal and unsavory practices.
- 1.6 That despite the damaging nature of the content of the preview attributed to Chinese businesses without any

proper context or narrative, none of the member businesses or individuals in the CCCZ have to the deponent's knowledge ever been interviewed or questioned by any representatives of the defendant.

1.7 That the video preview to the purported documentary that the defendant has compiled without any interview being conducted with any member of the CCCZ, presents an image that is deliberately calculated to discrediting the good standing image of the Chinese Businesses in Zambia without regard to fair and responsible journalism.

1.8 That it is the deponent's firm belief that should the documentary be permitted to be published by the defendant on 23rd May, 2025, as communicated in the preview, members of the CCCZ and the Chinese Business and Investment Community will suffer irreparable damage to their reputation and estimation in the eyes of the Zambian Public and International Community. That this is a proper case for which this Hon. Court should consider granting an order for interim injunction restraining the

defendant from further publishing the preview and purported planned documentary.

2. On the other hand, the defendant filed into court an affidavit in opposition dated 20th June, 2025, to the application for an order of interim injunction. The affidavit was deposed to by the Learned Counsel for the defendant, Mr. Hamwela. He deposed therein that the plaintiff failed to identify the specific words in the published promotional video that are alleged to be defamatory, and has further failed to identify the persons who are said to have been defamed by the said publication and hence that the plaintiff does not have a cause of action as there is no question to be tried.

- 2.1 That the defendant has pleaded the defence of justification and that an order of interim injunction cannot be sustained where the defence is pleaded. That the application for an order of interim injunction lacks merit and should be dismissed.

- 2.2 The matter was heard inter partes on 25th June, 2025. Ms. Mwambazi submitted that she was relying the affidavit in

support of interim injunction together with accompanying documents filed into court on 22nd May, 2025.

2.3 The learned State Counsel, Mr Nchito, submitted that they opposed the application on the basis that it infringes on the defendant's right to freedom of speech, given the nature of the application. Mr. Nchito S.C, submitted that the defendant filed an affidavit in opposition and skeleton arguments and in augmenting the same, State Counsel, argued that for an order of injunction to be granted or sustained, there ought to be a prima facie cause of action capable of succeeding at trial. That there is no cause of action in this case as there is no particular person who has been identified as being defamed. That there can never be defamation of a class.

2.4 That the writ states that the defamatory statement will defame a particular class of people in the business community and that as a requirement, the words complained of must specifically mention who they are going to defame. That there is therefore no cause of action

as the defendant has demonstrated in it's affidavit that the defendant pleads justification.

- 2.5 In reply, Mr Chizu, the learned Counsel for the plaintiff submitted that the plaintiff has highlighted excerpts in its affidavit, the words used in the video preview and which are considered defamatory to the plaintiff. That the said words are disparaging to the Chinese Business Community. Counsel referred the court to the case of **Sata v. Chimba**³ where the court held that:

“Reputation is an essential component of the dignity of the individual, it must be respected. It must not be assailed without lawful justification, once besmirched by unfounded allegations, the damage can be irreparable and everlasting, especially if there is no opportunity given to vindicate ones’ reputation....”

- 2.6 That the fact that the plaintiff in this case, being a custodian of Chinese businesses in Zambia, was never afforded an opportunity to be heard in respect of the documentary intended to be issued by the defendant, negates the justification of fair comment in public interest because the defendant being a media house has inherent

duty and obligation to deliver fair and unbiased news to the public. That it is therefore their submission and prayer that in light of this imminent risk to the plaintiff's reputation, the interim injunction be maintained even if only to afford the plaintiff an opportunity to be heard.

2.7 I have carefully considered the affidavit evidence, skeleton arguments from Counsel on both sides together with their submissions. I am of the considered view that it is trite law that Courts will not generally grant an injunction to restrain publication of defamatory statements more especially where the defendant intends to justify or to make a fair comment on a matter of public interest. (refer to the case of **Fraser v. Evans (1969) 1 Q B 349, 360**¹

where Lord Denning is quoted as saying:

"... But the better reason is the importance in the public interest that the truth should come out. The right to free speech is one which it is for the public interest that individuals possess, and indeed that they should exercise without impediment so long as no wrongful act is done. There is no wrong if it is true, or it is fair comment on a matter of public interest. The court will not prejudice the issue by granting an injunction in advance of publication".

- 2.8 The learned Author Martibini in his book, *Zambian Civil Procedure*, states at page 809, that in **Shamwana v. Mwanawasa (1993 – 1994) ZR 149 (HC) 153²**, Ngulube C. J, sitting in the High Court, observed that it is vitally important for the plaintiff to show some evidence of the defendant's intention to repeat the words that would legally be objectionable and actionable. This is particularly important if the court is to avoid making a global order which would simply be oppressive to the defendant who has shown by his affidavit evidence that he intends to plead some recognized defences.
- 2.9 From the authorities above, I am of the considered view, that the defendant has shown in it's affidavit in opposition to the application that it intends to plead the defence of justification to the alleged defamatory documentary or statements. I further am of the considered view that the Chinese Chambers of Commence, as a plaintiff is not necessarily the group of individuals allegedly defamed by the said statements, preview or video. It is therefore

correct that there is no cause of action in this matter to warrant the continued sustainability of the order of interim injunction that was earlier granted on 22nd May, 2025. I accordingly set it aside. The application is dismissed with costs to the defendant to be taxed in default of agreement.

Leave to appeal is granted.

Dated at Lusaka the 4th day of July,, 2025

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ELITA PHIRI MWIKISA
JUDGE