**SITHOLE v CHANGALA (1969) ZR 130 (HC)**

HIGH  5 COURT

GARDNER J

1st AUGUST 1969

**Flynote and Headnote**

[1]   **Civil procedure - Local court - Strict rules of procedure inapplicable***.*

   In local courts, the strict rules of procedure applicable in higher 10 courts do not always apply, although care must be taken not to deal with cases too summarily.

[2]   **Courts - Local court - Rules of procedure - In general.**

   See [1] above.

[3]   **Civil Procedure - Cross examination - Duty of court to explain to**15 **parties effect of failure to cross - examine.**

   Where a party refuses to cross - examine a witness, the court is under a duty to explain to the party the danger of failing to cross - examine.

[4]   **Courts - Local court - Rules of Procedure - Duty of court to explain to**20 **parties effect of failure to cross - examine.**

   See [3] above.

*Stacey,* for the Appellant:

*Respondent in person.*

**Judgment**

**Gardner J:** In this case the appellant, Jeremiah Sithole, sued 20 the respondent, Jane Changala, in the local court at Wusikili for a debt of K200. The record of proceedings before the local court indicates that the appellant claimed that he had paid debts on behalf of the respondent who had been apparently living with him as his wife. The appellant gave evidence of various sums which he had paid on behalf of the respondent, 30 the total of which amounted to K141.35. The respondent was asked by the local court if she would repay the money, and she said the amount was untrue. A witness was called to prove on behalf of the appellant that the respondent had paid the appellant K8 and promised to pay more money when she was able. A letter was produced in which the respondent 35 wrote to the plaintiff:

   "I agree the request that you make. I know that I am wrong myself." She went on to say: "You know that I have no money at present but when I get a job I will be able to repay your money because of the bad that I have done."

**1969 ZR p131**

GARDNER J

The local court gave judgment in favour of the plaintiff in the sum of K140, and the respondent appealed to the Subordinate Court, Class II, at Kitwe on 25th April, 1969. That court in its appellate capacity gave judgment in favour of the respondent, and in the course of his judgment the magistrate said that the plaintiff in any case must prove everything 5 which he avers. The magistrate found that the appellant was a boyfriend of the respondent, that K8 was paid to the appellant by the respondent for a reason best known to himself or the respondent and. that the latter revealed no specific amount that the appellant owed to respondent. The magistrate went on to say that he did not think the Zezulu man who read 10 the letter in the local court could be trusted because no name was given. I discount this latter finding of the magistrate. I have read the record of proceedings before the local court which consists of one page of foolscap, and I appreciate that [1] [2] in the local courts the strict rules of procedure which apply in the higher courts cannot always be applied, 15especially in view of the fact that the local courts are designed to speed the course of justice so that cases may be dealt with summarily. However, in order that justice may be done, cases must not be dealt with too summarily, and I note from the record in particular that the respondent was not called upon to give evidence on her own behalf. She was merely 20 asked questions by the court.

In these circumstances I cannot agree with counsel for the appellant that this is a matter of fact which was decided properly on the evidence by the local court. The local court did not hear all the evidence to enable it to decide whether the appellant or the respondent was telling the truth. 25 The respondent was given an opportunity to cross - examine by the court but she said she did not want to. [3] [4] In such circumstances I consider it the duty of the court to explain to the parties the danger in their failing to cross - examine. In particular the appellant should have been cross - examined as to his reasons for paying the amounts which he alleges 30 he did pay. If he was in fact living with the respondent, it may well be that he paid the amounts as a gift. This applies especially in respect of K20 which he gave the respondent for her children. On the evidence adduced at the trial before the local court I am not satisfied that any court could give judgment for one party or the other. 35

As this is a case in which the subordinate court has jurisdiction I order a retrial before a subordinate court of competent jurisdiction.

No order as to costs.

*Order accordingly*