

J.K. MPOFU v IMPREGILO RECCHI (ZAMBIA) LTD AND GOODWIN  
MUNGANDI (1979) Z.R. 51 (H.C.)

HIGH  
SAKALA, J.  
28TH FEBRUARY, 1979  
1978/HP/1231

COURT

**Flynote**

Criminal law and procedure - Appeals - Jurisdiction - Appeal against decision of deputy registrar on assessment of damages - Whether Appeal lies to Supreme Court or to judge in chambers.

**Headnote**

The main issue for consideration in this case was whether an appeal from the order of assessment of damages by the deputy registrar lies to a judge in chambers.

**Held:**

- (i) The deputy registrar having assessed damages, the dissatisfied party should appeal to the Supreme Court and not to a judge in chambers.

**Cases cited:**

- (1) Ernst Karl Paul Lembe v Kearney & Company (1979) Z.R. 20.  
(2) Times Newspapers Zambia Limited v Kapwepwe (1973) Z.R. 292.

**Legislation referred to:**

High Court Rules Cap. 50, O. 30, r. 10 (1).  
Supreme Court Rules 1976 (England), O. 58 r. 2.

For the plaintiff: A.R. Lawrence, Solly Patel, Hamir & Lawrence.

For the defendant: J.M. Ngwenya, Jaques and Partners.

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**Judgment**

**SAKALA, J.:** This is an application by the defendants for leave for extension of time within which to file an appeal against the judgment of the learned deputy registrar on assessment of damages given on the 30th November, 1978.

Although both parties have advanced arguments which relate to the merit of the appeal the court at the beginning of the hearing posed the question - Can an order of assessment of damages by the deputy registrar be appealable to a judge in chambers? With greatest respect to both parties it would appear that they assumed the procedure. Consequently with fairness to them, they had not seriously addressed their minds before they appeared before this court.

On the 12th February 1979, this court delivered a ruling on the same preliminary issue in an unreported case of *Ernst Karl Paul Lembe and Kearney and Company Limited* (1). The issue in that

case was also an application to a judge in chambers for extension of time within which to file a notice of appeal to a judge in chambers against the decision of the deputy registrar on assessment of damages. In that case just as in the present application, the court invited the submissions of both counsel on a point of procedure, namely, whether an appeal from the order of

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assessment of damages by the deputy registrar lies to a judge in chambers or direct to the Supreme Court. This point was raised in that case because it appeared from the history of that case that after Mr Justice Bweupe had entered judgment in favour of the plaintiff he directed that damages be assessed by the deputy registrar in chambers. The deputy registrar in chambers assessed damages in that case after hearing evidence from both parties. The appellant having been dissatisfied with that assessment appealed to this court. I said in that judgment:

"If the application for the extension of time is allowed, what it means in effect is that, this court will have to hear an appeal against the decision of the Deputy Registrar on assessment of damages referred to him by a court of the same jurisdiction as this court."

The only difference between the two applications is that in the earlier one the assessment was referred to the deputy registrar by a judge while in the instant application the learned deputy registrar assessed damages after an interlocutory judgment. However, the substance of the two cases in my view is the same. In that case, after both counsels made submissions based on O. 30, r. 10 (1) of the High Court Rules and O. 58 r. 2 of the 1976 ed. of the White book, I said:

"It follows in my view that a decision, order or direction made by the Deputy Registrar on a matter referred to him by a judge is made on behalf of the judge and hence it is the decision or order of the judge who referred the matter to him. While order 30 rule 10 (1) of Cap. 50 may be said to be wide, it would in my view be a contradiction that a decision made by the Deputy Registrar on behalf of a judge should be appealable to the same judge or court of the same jurisdiction."

I further went on to say:

"While order 30 rule 10 (1) may not be of great assistance on the point, this court is in my opinion entitled to seek assistance from order 58 (2) of the 1976 edition of the White Book by virtue of section 10 of Cap. 50 which entitles the High Court to conform to the law and practice observed in the High Court of justice in England in case of default in our law. The practice in England according to order 68 (2) of the Supreme Court Rules is that an appeal from the judgment, order or decision of the Master is to the Court of Appeal."

I held in that case that I could not entertain the application on the ground of lack of jurisdiction.

At the time I was hearing that appeal, my attention was never drawn to the case of *Times Newspapers Zambia Limited v Kapwepwe* (2). The facts of that case are not very relevant to this application. But it is the procedure followed in that case which is very relevant in this application, namely, the deputy registrar having assessed damages, the dissatisfied partner appealed direct to the

Supreme Court and not to a judge

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in chambers. I do not see why there should be any difference in procedure between this case and the present application. While O. 30 r. 10 (1) appears not very clear, I take the view that the deputy registrar and a judge in chambers on assessment of damages exercise the same jurisdiction. Otherwise the practice of referring to the deputy registrar for assessment of damages would be rendered meaningless. I decline to entertain this application on ground of lack of jurisdiction.

Taking into account the nature of the preliminary point, I consider it fair that each party bear its own costs.

Application refused

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