

**THE STATE LOTTERIES BOARD OF ZAMBIA v ALICE TEMBO (1988 - 1989)**  
**Z.R. 16 (S.C.)**

SUPREME COURT  
NGULUBE, D.C.J., GARDNER, J.S., AND BWEUPE, AG. J.S.  
4TH FEBRUARY AND 17TH MARCH , 1988  
(S.C.Z. JUDGMENT NO. 3 OF 1988)

**Flynote**

Contract - State lottery - Application of express term as to place where ticket must be deposited.

**Headnote**

The respondent had purchased a state lottery ticket and retained the duplicate copy. When the draw was made numbers chosen by her came up. When she lodged her claim for the prize money she was told by the appellant that her ticket had not been deposited in a designated security area by the agent from whom she had bought the ticket. A rule governing the lottery stipulated that prizes would not be paid to holders of tickets which are not already deposited in a designated security area at the time of the draw. She sued to receive the money. The trial Judge gave judgment for the respondent by disregarding the rule that a ticket handed in to an employee of the appellant could not be said to be in the possession of the appellant. The appellant appealed.

**Held:**

By the terms of the rule that governed the lottery the respondent was bound and it was not open to the Court to waive its application.

**Legislation referred to:**

1. State Lotteries Act, Cap 439 s 20 (3)

For the appellant: E.B. Mwansa, EBM Chambers.

For the respondent: P.C. Zulu, Patrick Zulu and Partners.

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**Judgment**

**NGULUBE, D.C.J.:** delivered the judgment of the Court.

This is an appeal from the judgment of a High Court commissioner who upheld the respondent's claim to be paid by the appellant a jackpot of K40,000 which the respondent claimed she had won in the appellant's pick-a-lot draw for the second week of January, 1984. The basic facts of the case were not in dispute and can be summarised thus: the appellant is a parastatal statutory board which is authorised by Cap 439 of the Laws to run, among other things, a weekly state lottery in which punters attempt to win 'money that dreams are made of' by purchasing a ticket and trying to forecast thereon which four numbers, from one to ninety, will be drawn out of the drum. The respondent was one such punter. She purchased a "big three" ticket which she completed and handed in to a collector employed by the appellant and stationed at the appellant's head office in Cairo Road, Lusaka. The original of the ticket - which comes in duplicate - remained with the collector and she carried the duplicate to her home. The draw is broadcast over Radio Zambia every Sunday morning

and the respondent found that she had correctly forecast the four

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winning numbers. On the Monday next, she called to claim the K40,000 jackpot on offer for the week. She was not paid and the appellant refused to entertain her claim.

The lottery is governed by a set of conditions printed at the back of the ticket as well as by the rules contained in a Statutory Instrument. We will revert to these rules and conditions in a moment but one such rule is to the effect that prizes will not be paid to holders of tickets which are not already deposited in a designated security area at the time of the draw. Because of the collector's negligence, the respondent's ticket was not in the appropriate place and she was not paid the jackpot, or a share of it since we understand that someone else got the particular jackpot. She sued and the appellant relied on the conditions and the rules to resist the claim. The learned trial commissioner was totally opposed to the conditions and the rules which he found to be unfair and oppressive and which he suggested ought to be amended. He declined to give them any effect and entered judgment for the respondent.

The first ground of appeal contends that the learned trial commissioner erred in law and in fact to have disregarded or excluded the application of the printed conditions and the statutory rules. The most important rule relied upon is rule 12(6) of the pick-a-lot draw Rules, 1975, and it reads:

" 12 (6) No prize shall be paid unless the Director is satisfied that the original ticket was lodged within the designated security area at the state lottery head office, Cairo Road, Lusaka, before the draw to which the ticket relates was conducted."

There was evidence that the appropriate designated area is located in a hall on the third floor of the appellant's head office in Cairo Road, Lusaka. As Mr *Zulu* for the respondent properly conceded, there is a very good reason for this rule and it is not difficult to discern. Indeed the learned trial commissioner in his judgment accepted that there would be possibilities of fraudulent claims if tickets which have not been received in the proper place were allowed to win prizes. We can very well imagine that if a punter were to connive with one of the ticket sellers, it would be possible, for example, for a ticket to be date-stamped before the draw but a winning line to be filled up after the draw. It could then be claimed that due to oversight or negligence, the collector omitted to send in the ticket to the proper area. We are aware, of course, that there was no suggestion, let alone proof, of fraud in this case but unless the rule is enforced, the floodgates would be opened to all manner of fraud and, quite clearly, it was to safeguard the appellant against the possibility of such eventuality that the law made provision for this type of contingency. We have no doubt in our minds that it would be wholly erroneous to bereave this very reasonable rule of any efficacy in the manner adopted below.

The learned trial commissioner considered himself at liberty to disregard the rule which we have quoted on the basis that a ticket handed in to an employee of the appellant could not be said not to have been in the possession of the appellant. But the rule is not concerned with possession; it is concerned with participating tickets being physically located in the security area. By the terms of section 20(3) of Cap 439 and as a matter of statutory law, therefore, the respondent was bound by

this rule and it was

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not open to the learned trial commissioner to waive its application. The Court below cited no authority for declining to give effect to a statute under which the game is played. The ground of appeal in this regard has to succeed.

There were other arguments related to the conditions at the back of the ticket some of which are a repetition of the rules contained in the Statutory Instrument. Some of these related to the rule that the transaction between the appellant and any punter created no contractual relationship but would be binding in honour only. Other arguments related to the question of the employee's negligence and an exemption clause dealing therewith. In the view that we take, it is unnecessary for the purpose of resolving this appeal, to express any firm opinions on those other rules and conditions save to observe that under the Statutory Instrument concerned, there is clearly implied a right in the punter to enforce by action a *bona fide* claim where the rules have otherwise been complied with or satisfied. In relation to a claim based on negligence, we can see no basis for distinguishing between a ticket seller employed by the appellant and an independent ticket seller appointed to conduct sales from his own premises. While it is unnecessary to discuss what the rights and obligations would be between the negligent collector and the aggrieved punter, it is of vital importance to point out that the risks intended to be guarded against by the rule requiring tickets to be lodged in a designated security area are exactly the same in both instances. It follows that, in our considered opinion, where a claim has been rejected because a ticket was not in the appropriate area, an alternative cause of action founded on the State Lottery Board's alleged vicarious liability in negligency should not be available to a punter as a method of circumventing a clear rule and exposing the Board to the risk of payment, as it were, through the backdoor in respect of a claim which could not be entertained at the front door.

We have considered sympathy for the punter in this appeal since, quite clearly, there was no suggestion of culpable conduct on her part; but the principle is that the particular rule must be upheld on the wider consideration that the appellant should not be exposed to the possibility of spurious claims. It is, of course, pointless for us to request the appellant to consider making a payment in honour, though they are free to do so if they wish on the special facts of this case. They appealed to us to uphold a wider principle based on the rules of the game and this we have done. The appeal is allowed and the judgment complained of set aside. Although costs normally follow the event, we find that, on the facts, the respondent had to sue and the appellant had to appeal in order to clarify a matter of general importance to the pick-a-lot enthusiasts. There will, therefore, be no order as to costs both here and below.

Appeal allowed.

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