

DEVELOPMENT BANK OF ZAMBIA v MANGELE FARMS LIMITED (1995)
S.J. (S.C.)

SUPREME COURT
GARDNER, SAKALA AND CHAILA JJ.S.
31ST JANUARY, 1995 AND 10TH MAY, 1995.
(S.C.Z. JUDGMENT NO. 8 OF 1995)

Flynote

Appeal - Assessment of damages - Interest - Judgment Act - Amendment of

Headnote

The appellant appealed against an assessment of damages in an action arising out of the illegal sale of the respondent's implements by the appellant. The deputy registrar assessed the damages in favour of the respondent and the appellant appealed against the deputy registrar's order claiming that the normal measure of damages should be the market value at the time of the wrong

Held:

- (i) Any award of interest of judgment debts of no more than 6%, cannot be amended by statutory instrument, so any award of interest in excess of that rate is ultra vires unless or until the Judgment Act is amended

Cases referred to:

- (1) Mohamed and Anor v Chumbu (1993) S.C.S. Judgment No. 8 of 1993
- (2) Resenthal v Alderton v Son Ltd (1946) All E.R. 583.
- (3) Sachs v Miklos (1948) All E.R. 67
- (4) United Bus Company Of (Z) Ltd v Shanzi (1977) Z.R. 397 [SC]
- (5) Anderson & Anor v bank of Zambia S.C.Z. Judgment No. 23 of 1993

For the appellant: B. Gondwe Development Bank of Zambia

For the respondent: P. Mwale of Peter Mwale & Associates

Judgment

GARDNER, J.S.: delivered the judgment of the court.

This is an appeal from an assessment of damages for the value of goods wrongfully converted.

The facts of the case are that the appellant obtained judgement against the respondent for money due. Pursuant to a court order the appellant seized a tractor and plough and other farm implements from the respondent. The tractor and plough were sold in satisfaction of the judgment debt and the balance of the money realised from such sale amounting to K177,439.44 was accounted for to the respondent.

The respondent was then advised to collect the remainder of the implements but they were not available because they had been sold by an agent of the appellant. the respondent issued a

writ of the 6th of November 1992 claiming the sum of K485,000.00 being the value of the implements illegally sold by the appellant's agent plus interest at 55% per annum from the 15th November 1990. thereafter the respondent issued a summons under Order 13 and the appellant filed an affidavit in opposition alleging that the implements were not worth the amount claimed in the writ and arguing that they were entitled to be indemnified by their agents. On the hearing of the summons an order was made by the District Registrar giving judgment to the respondent for damages to be assessed. At the hearing of the assessment of damages the respondents filed an affidavit showing the current market price of the items in October 1993 as being four million six hundred and ninety thousand Kwacha. In his judgment on assessment dated 26th March 1994, the learned District Registrar awarded that sum together with interest at 40% per annum from the date of the writ and 80% per annum from the date of judgment. the appellant appealed against that order claiming that the normal measure of damages should be the market value at the time of the wrong.

In support of the appeal Mr Gondwe argued that the value at the date of the sale of the implements which he said was July 1991 was the date at which damages should be calculated. He maintained that the respondent's claim in the writ was on the basis of conversion, and that therefore, the value of the goods at the time of conversion should be taken as damages. In support of his argument we were referred to the case of *Mohammed and Aner v Chumbu* (1), *Rosenthal v Alderton v Son Ltd* (2), due *Sachs v Miklos* (3). As to interest Mr Gondwe argued that the rate awarded was too high. Mr Mwale argued that the award by the District Registrar was correct.

In considering at what date goods should be valued in assessing their value, this varies in accordance with the cause of action. In the Mohamed case, this court, following the English authorities, held that the value of a motor car destroyed in an accident would be taken as the value at the time of the loss; but the situation is different when damages claimed in a case such as this which is a claim for damages for goods wrongfully sold, that is, for detinue or conversion, the measure of damages for which is now the same.

The law on the subject is set out in the cases cited by Mr Gondwe. In *Sachs v Mikles*, at page 69, Lord Goddard, L.C.J. said that what *Rosenthal v Alderton & Sons Ltd* laid down was correctly stated as follows:

"In an action of detinue, the value of the goods to be paid by the defendant to the plaintiff in the event of the defendant failing to return the goods to the plaintiff must be assessed as at the date of the verdict or judgment in his favour and not at that of the defendant's refusal to return the goods, and the same principle whether the defendant has converted the goods by selling them or has refused to return them for some reason."

In the *Sachs v Mikles* case the situation was slightly different because notice was alleged to have been given by letter written by the bailee to the bailorgiving notice that the goods were to be sold. There was a dispute as to whether this letter had been received and the court held that if it had been received the date of such notification should be the date of valuation of the goods. These facts do not of course apply in this case where judgment was signed against the appellant on the basis that the goods were improperly sold without notice of the proposed sale. The question of at what date the goods should be valued is therefore answered by the cited cases, and the date of assessment must be the date which governs the issue in this case.

As to interest, the respondent would in the ordinary way be entitled to this compensation for being deprived of its implements or their value until payment. (See *Shanzi v U.B.Z* (4)). Mr

Gondwe argued that the respondent should not , in any event receive the cost of replacing used implements with brand new ones. We agree that the respondent should not be unjustly enriched, but there was n evidence in the lower court as to the condition of the implements or how long they had been in use. There was nothing to guide the court below in this respect, and this another case where the parties have not assisted the court by calling the necessary evidence. We shall have to do the best we can do to avoid the unjust enrichment of the respondent. The best way to do this will be to leave the valuation as it stands but to remove the interest that is payable. In order to follow the principle laid down in *Anderson & Anor v Bank of Zambia*, that account should be taken of the fact that the award of damages has already been increased by the rate of inflation to the present day value, the interest should have been, in the ordinary course of the events, at one quarter of the average rate. In this case, however, in order to avoid the unjust enrichment of the respondent there should be no award of interest at all.

With regard to the award of 80% interest after judgment, the judgment Act, Cap. 69, which provides for the award of interest on judgment debts of no more than 6%, cannot be amended by statutory instrument, so any award of interest of judgment debts of no more than 6%, cannot be amended by statutory instrument, so any award of interest in excess of that rate is ultra vires unless or until the Act is amended.

The appeal is allowed and the interest awarded in the court below is set aside.

Costs will follows the event.
Appeal allowed.

(SUPREME COURT)