

SIMEZA, SANGWA AND ASSOCIATES v ZAMBIA INSTITUTE OF MASS
COMMUNICATION COUNCIL (1998) S.J. 23 (S.C.)

SUPREME COURT
SAKALA, CHIRWA AND MUZYAMBA, JJ.S.
24TH FEBRUARY AND 15TH APRIL, 1998.
(S.C.Z. JUDGMENT NO. 6 OF 1998)

Flynote

Banking Law - Clients' account - Whether money kept there attracts interest

Headnote

The appellants, a firm of advocates, were retained by the respondents to collect a debt through a process of litigation. The debt was collected. The cheque was deposited in a client's account maintained by the appellants at the Meridien Biao Bank. Before the money was paid to the respondents the bank was placed under receivership. The respondents sued the appellants for recovery of the money and the Deputy Registrar found for the respondents under Order 13 of the High Court Rules. A High Court judge upheld the Deputy Registrar's findings and the appellants appealed to the Supreme Court. One of the issues raised was whether the appellants should pay interest on the money they owed the respondents

Held:

- (i) Money kept in a clients' account does not earn interest therefore the respondents are not entitled to costs on the money owed by the appellants

Authorities referred to:

- (1) Bowstead and Reynolds on Agency, 16th Edition.
- (2) Turner v Buckinshaw (1867) L.R.2 CH. APP. 488.
- (3) Re: A Solicitor (1951 M. No. 234) (1952) 1 ALL E.R. 113)

For the appellant: R.M. Simeza and J.P. Sangwa of Simeza Sangwa Associates.

For the respondent: N/A

Judgment

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

This is an appeal against a ruling of a High Court Judge upholding a judgment of the Deputy Registrar entered under order 13 of the High Court Rules. The facts, which were common cause, are that the appellants, a firm of advocates, were retained by the respondents to collect a debt through a process of litigation. The debt was collected. The cheque was deposited in a client's account maintained by the appellants at the Meridien Biao Bank. Before the money was paid to the respondents the bank was placed under receivership.

Subsequently the respondents issued a Specially Endorsed Writ claiming the sum of K22,000,000.00 being money had and received by the appellants as the respondents agents. The respondents further claimed interest at current bank over draft rate. The appellant however entered a Conditional memorandum of appearance. The respondents obtained judgment under Order XIII before the Deputy Registrar. On appeal to a judge at Chambers, the appellants were unsuccessful despite the spirited legal arguments placed before the appellate judge.

The court found that the facts raised no triable issue on account that a client's account maintained at a bank is a matter between the advocate and his bankers; the clients being not privy to it.

In arguing the appeal before us Mr Simeza filed written heads of arguments based on four grounds. Advocates for the respondents filed heads of argument based on one ground and in addition filed a notice of non appearance. Mr Simeza informed the court that since the respondents' advocates had not responded to the first three grounds of appeal, he was relying on his written heads of arguments on the three grounds and asked the court to take those written arguments into account.

Ground four argued before us is that the learned appellate judge misdirected himself on a point of law by not considering the question of an advocates' duty on clients money. Counsel argued that in terms of Section 58 of the Legal Practitioners Act, Cap. 30 of the laws of Zambia, the appellants complied with the provisions, but out of no fault of their own the Bank went into liquidation. Counsel submitted that on the facts of the case the advocate cannot be held liable and cannot be penalised to pay interest and costs. Mr Simeza contended that money held in a client account is trust money and an advocate cannot be held liable in the event of a Bank going into liquidation. Mr Simeza cited a number of authorities in support of his submissions.

On interest Mr Simeza submitted that no interest is payable on a client's account and that in the instant case there was no evidence that the money had earned interest. For this submissions Mr Simeza cited para 6-100 of Bowstead and Reynolds on Agency, 16th Edition and the case of Turner v Buckinshaw (1867) (2).

In concluding his arguments Mr Simeza informed the court that the principal sum has since been received from the liquidators of Meridien BIAO Bank and paid over to the respondents' advocates. This is confirmed in written heads of arguments filed by the respondents' advocates. Mr Simeza further informed the court that the respondents were now claiming interest on the sum as per judgment of the court below when the Bank did not pay the appellants any interest.

The gist of the respondents' written heads of argument is that at this juncture the appellant's appeal is purely academic as the claim has been partly satisfied and only interest and costs have not been paid.

The Statement of Claim as endorsed on the writ reads as follows:

"The plaintiff's claim is for K22,000,000.00 being money had and received by the defendants, as the plaintiffs' agents, for the use of the plaintiff.

Particulars 8th May, 1995: To the sum of K22,000,000.00 received by the defendants acting as Advocates for the plaintiff in the collection of money due to the plaintiffs from the Lusaka City Council. AND the plaintiff further claims interest on the said sum at the Current Bank Overdraft rates from the 8th May, 1995, to date of payment."

On the facts not in dispute we are satisfied that the respondent action was properly founded in law. We are further satisfied that in so far as the principal amount was concerned there was no triable issue on the facts and the default Judgment can not be faulted. This was the only logical and legal method the respondents could have recovered their money in law. We have considered the authorities cited by Mr Simeza. We respectfully find them irrelevant to the issues

in the present appeal as in those authorities it was the Advocate himself who maintained the clients account who became bankrupt and the issues related to the removal of the advocate from the trusteeship of the account and the appointment of new trustees (See Re A Solicitor)

(3). In the instant case it is the Bank in which the appellants maintained a clients account that went into liquidation. In our view, while the appellants would have been perfectly entitled to cite the Liquidators as Third Party to the action if they had so wished, the only remedy open to the respondents in law was to claim for money had and received by the appellants bearing in mind that the claim was not based on negligence. The real issue in this appeal as we see it relates to the order of interest and costs.

Mr Simeza's contention was that it was erroneous on the part of the court to award interest on money kept in a clients account and that such an award is not supported by any authority under the Legal Practitioners Act. Section 58 of the Legal Practitioners Act, Cap 30 reads as follows:

"58. Every practitioner who holds or receives money on account of a client (sale money hereinafter expressly exempted from the application of this section), shall without undue delay pay such money into a current or deposit account at a bank or into a deposit account at a building society, to be kept in the name of the practitioner in the title of which the word "client" shall appear (hereinafter referred to as "a client account). Any practitioner may keep one client account or as many such accounts as he thinks fit."

We have examined this section as well as the other provisions. We are satisfied that a client account does not earn interest. We take note that money in a clients account is not traceable to a specific client. The order of interest was therefore a misdirection and we set it aside. On the facts of this case the appropriate order of costs should have been that each party will bear its own costs. We also set aside the order of costs.

We therefore order that each party will bear its own costs in this court and in the court below. The appeal has therefore partially succeeded on interest and costs but unsuccessful on the principal sum which we understand has already been paid.

Before leaving this case we wish to make what we consider as a very pertinent observation on the facts of this case. This claim raised an important question of the issue of liability but happily, the turn of events rendered a tough decision unnecessary when the liquidators paid the money. But an important question still remains of how far the fiction of money had and received can be the basis of liability of an innocent lawyer who keeps a client account in a bank that goes under, when he had nothing to do with that happening. the question is: Where should the loss lie? As we have said the issue has resolved itself in the present case and we do not propose to make any pronouncements on the matter.

Appeal partly allowed.
