

ZAMBIA CONSOLIDATED COPPER MINES LIMITED v REDDY DAKA AND DAVID KANTUMOYA (1998) S.J. 9 (S.C.)

SUPREME COURT
NGULUBE, C. J., MUZYAMBA AND LEWANIKA, JJ.S.
2ND DECEMBER, 1997 AND 3RD MARCH, 1998.
(S.C.Z. JUDGMENT NO. 3 OF 1998)

Flynote

Civil Procedure - Review - Whether Registrar has powers to review his own decision

Headnote

The respondents sued the appellant for wrongful dismissal and were awarded damages by the High Court whereupon the assessment of damages was conducted by the Deputy Registrar. After the damages were assessed, the respondents took out a summons for review of the judgment which later resulted in a review of the assessment being done by a different Deputy Registrar. The appellants appealed.

Held:

- (i) No Registrar has powers under Order 39 of the High Court rules to review his own decision
- (ii) There was no justification for the review of the assessment

Cases referred to:

- (1) Robert Lawrence Roy v Chitakata Ranching Co. Ltd (1980) Z.R. 198
- (2) Jacobus Wynand Koekemoer v Martha Marion Gower (1981) Z.R. 138

For the appellant: P. Chamutangi, Legal Counsel.

For the respondent: Mrs I. Kunda, George Kunda & Company.

Judgment

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

This is an appeal against a review of assessment of damages on 10th February, 1997.

The events are that the respondents were employed by the appellant at Road Division as Plumber and Foreman respectively. Sometime in November, 1994, they were summarily dismissed for unlawful possession of company property, a cistern. Unhappy with their dismissals they brought an action against the appellant for a declaration that their dismissals were null and void and for reinstatement. They were successful and the learned trial judge made the following order, at page 14 of the record:

"I therefore find that the subsequent verdict of summary dismissal had no effect whatsoever. I uphold the earlier verdict of a final warning and 14 days suspension. The two plaintiffs having already served their sentences should now be regarded as having been employees of the defendant company all along. Their dismissal is therefore declared null and void. I will award them damages for wrongful dismissal in lieu of reinstatement together with interest and costs. I refer the matter to the learned District Registrar for assessment of damages."

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On 11th October, 1995, the respondents took out summons for assessment of damages

returnable on 16th November, 1995. The assessment was done and a reserved ruling was delivered on the following day, 17th November, 1995. The respondents were awarded respectively K1,133,897.36 and K1,482,467.95 plus interest at 15% from the date of the issue of the writ to the date of assessment. Then on 16th March 1996 the respondents filed summons for review of the main judgment delivered on 29th September, 1995. The proceedings before the learned trial judge on 27th September, 1996, at page 64 of the record read as follows:

"Mrs Kunda: The matter was coming up for clarification but we are more or less agreed on the point that the unresolved payments should be Mr Chamutangi: The court had referred the matter to the learned District Registrar for assessment. There is really nothing to be reviewed by it.

Court: The court had declared the dismissals null and void but awarded damages instead of re-instatement from the date of the purported dismissal till payment together with interest and costs. I do not think that there is anything more left for my Court to revisit really.

ORDERS

Matter is referred back to the Learned District Registrar for him to Revisit his assessment if necessary. Costs in the cause."

A review of the earlier assessment of damages was then done on 10th February, 1997, by a different District Registrar. In the review the respondents were awarded respectively K14,551,340.00 and K22,350,509.99. The computation was for years served and not yet served making, in case of the first respondent 22 years and 31 years for the second respondent. The awards were therefore up to the retiring age of each respondent.

Three grounds of appeal were argued, first that the District Registrar had no powers to review his own judgment and to allow fresh evidence, two that the measure of damages in the circumstances of this case is the notice period and three that the learned District Registrar erred by failing to give any basis for his calculations. The arguments on grounds two and three overlapped and we propose to treat them as one ground.

On the first ground Mr Chamutangi argued that the learned District Registrar had no powers to review his own decision. That in any event the conditions laid down in the Roy case (1) for a court to review its own decision were not present in this case. These are that material evidence which would have had material effect upon the decision of the court has since been discovered and that it could not with reasonable diligence have been discovered before. That fresh evidence which was adduced at the review was available to the respondents at or before the original assessment. Therefore that it was wrong for the learned District Registrar to review his judgment and to allow fresh evidence. In reply Mrs Kunda argued that the learned District Registrar had powers to review his own decision and in support of her argument she referred the court to the decision in the Jacobus case (2) and in answer to a question by the court whether it was proper for the learned

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District Registrar to review the decision of another District Registrar she said it was since the other District Registrar was out of town.

We have considered the arguments by both Counsel. We do not propose to consider the case of Roy (1) which is a High Court decision and is not binding on us. In Jacobus case (2) the court was concerned with Section 10 of the Debtors Act, Cap.87 now Cap.77 which provides in part:

"Where the plaintiff in any action before the High Court or any subordinate court proves at any time before final judgment by evidence on oath to the satisfaction of the court that he has good cause of action against the defendant to the amount of twenty Kwacha or upwards, and that there is probable cause for believing that the defendant is about to quit Zambia unless he be apprehended and that....."

In deciding whether or not the words "High Court" in the Section embraced the Registrar of the High Court and his Deputies it became necessary for the court to examine the provisions of

the High Court Act and rules and came to the conclusion that the words included the Registrar and his Deputies and that they had the same jurisdiction as a Judge in Chambers and therefore that the Registrar had powers to review his earlier decision. This case is distinguishable from the case before us in that the application for review in this case brought under Order XXXIX of the High Court Rules Cap.27 Rule 1 provides:

"Any Judge may, upon such grounds as he shall consider sufficient, review any judgment or decision given by him (except where either party shall have obtained leave to appeal, and such appeal is not withdrawn), and, upon such review it shall be lawful for him to open and rehear the case wholly or in part, and to take fresh evidence, and to reverse, vary or confirm his previous judgment or decision."

This rule is quite specific. It confers upon a Judge powers to review his own decision and receive fresh evidence and to either vary or confirm his earlier judgment. Had the rule spoken of a "court" then the arguments by Mrs Kunda could have been valid. We find therefore and hold that the learned District Registrar had, notwithstanding that he may have understood the order of the learned trial Judge that if he found it necessary to review his earlier decision he should do so, no powers and for that matter no Registrar has powers under Order 39 of the High Court rules to review his own decision. In view of what we have said it is unnecessary for us to comment on whether or not it was proper for the learned District Registrar to review the decision of another District Registrar.

We now turn to grounds 2 and 3. Mr Chamutangi argued that the learned trial Judge found that the respondents were wrongfully dismissed and ordered that they be paid damages. That ordinarily damages for wrongful dismissal are equivalent to the period of the notice required to terminate employment. That in this case employment was terminable by a month's notice on either side. That in the original assessment each respondent got more than a month's salary and attendant allowances. That they were treated as having remained in employment and were paid salary arrears and other benefits upto 29th September 1995. That there was therefore no justification for the review and for revived awards which

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the learned District Registrar did not support by any authority. In reply Mrs Kunda argued that in the original assessment the respondents were given salary arrears only and that the purpose of applying for a review was for the respondents to be paid other benefits such as market supplement, mealie meal, education and repatriation allowances. That these were due, she referred us to documents 114-117 of the record. Asked by the court whether she supported the revised awards or knew of any authority to support the learned District Registrar's computations she said she did not and knew no authority.

We have considered the arguments by both Counsel and we have also examined the affidavits and exhibits on record and we are satisfied that in the original assessment the respondents were awarded salary arrears and allowances and leave pay from November ,1994, to September ,1995.

We would therefore agree with Mr Chamutangi that the respondents got more than the usual measure of damages for cases of this nature and therefore that there was no basis or justification for the review.

We would therefore allow the appeal, set aside the revised awards and restore the original awards made on 17th November,1995. Costs to follow the event.

Appeal allowed
