

AMADEUS INTERNATIONAL LIMITED v RANA MARKETING LIMITED

SUPREME COURT

CHIRWA, J.S.

26TH OCTOBER 2000

(S.C.Z. APPEAL NO. 154 OF 99)

Flynote

Commercial law - recovery of debt - appointment of receiver - whether receiver correctly appointed.

Headnote

The respondent sought to recover the sum of K409,000,000-00 from the appellant. The respondent by an ex-parte application applied to court for an appointment of a receiver under order 30 rule 1 of the Rules of the Supreme Court. The application was granted and a receiver was appointed. The appellant applied to court to stay execution of the appointment of the receiver. The trial judge never dealt with this application. Instead the trial judge converted the application for stay of appointment order into inter-partes hearing of the respondent's application for appointment of receiver and confirmed the appointment of the receiver. On appeal it was argued that the trial judge had erred because under order 30 of the rules of the Supreme Court the only ex-parte order that could be made was that of an injunction.

Held :

It was a misdirection to treat application for stay of execution as an inter-partes hearing as matters focused in application for stay are different from those on inter-partes summons. Appeal allowed.

For the Appellant C. Hakasenke, Hakasenke & Co.

R. Simeza, Simeza Sangwa Associates

For the Respondent M. Malila, Phoenix Partners

Judgment

CHIRWA, J.S., delivered the judgment of the court.

At the hearing of this appeal on 26th October 2000 we allowed the appeal and sent the matter back to the same judge to hear the matter interpartes and promised to give reasons later. This we now do.

The substantive matter is a suit for the recovery of K409,000,000-00 (four hundred and nine million kwacha) by the respondent from the appellant. The pleadings have been concluded. The respondent by an ex parte application applied to the Court for an appointment of a receiver under Order 30 Rule 1 of the Rules of the Supreme Court. The application was duly granted and a receiver appointed. The appellant applied to Court to stay execution of the appointment of the receiver. The application was heard on 8th July 1999. From the ruling at pages 5 and 6 of the record, it does not seem that the learned trial judge ever dealt with this application. In its stead converted the application for stay of appointment order into inter-partes hearing of the respondent's application for appointment of receiver and confirmed the appointment of the receiver.

Four grounds of appeal were filed but only three were argued. Detailed written heads of arguments were filed in Court. The advocate for the respondent also filed written heads of arguments.

In the first ground of appeal it was argued that the learned trial judge misdirected himself and erred in law in making the appointment of receiver ex-parte as under Order 30 of the Rule of Supreme Court the only ex-parte order that can be made is that an injunction. In answer to this ground it was submitted that Order 30 Rules I merely provides that an application for appointment of receiver may be made by summons or motion, it does not specify whether the summons are ex-parte or inter-partes.

We have considered this ground of appeal. We should point out that ex-parte orders are only granted in urgent matters where if not granted there may be wastage, irreparable damage or loss of item or chattel and this order must be followed not later than 7 days by inter-partes hearing to afford a chance to the other party to be heard. In the present case, although counsel for the appellant stated that summons were inter-parte this is not the position at all. The summons at page 127 of the record clearly make it ex-parte as it merely called upon counsel for the plaintiff (respondent) to attend Court on 4th June 1999. Further there is nothing on record that any inter-partes hearing was fixed. The learned judge only treated summons for stay of appointment of the receiver as inter-partes hearing. Clearly the appellant has not been afforded an opportunity to be heard on the appointment of a receiver. There are various considerations to be taken into account before one is appointed a receiver and Order 30 gives guidance on this. It was a misdirection to treat application for stay of execution as an inter-parte hearing as matters focused in application for stay are different from those on inter-partes summons. We allow this ground of appeal. As this was the main ground of appeal, namely ex-parte appointment of a receiver, there is no need to consider other grounds of appeal. It is for these reasons that we allowed the appeal and ordered that inter-partes summons be issued and considered by the Judge objectively. Costs will abide the outcome of the main trial.
