

## **CUSA ZAMBIA LIMITED v. ZAMBIA SEED COMPANY LIMITED**

SUPREME COURT

LEWANIKA, J.S.

8<sup>TH</sup> AUGUST, 2000 AND 1<sup>ST</sup> NOVEMBER, 2000  
APPEAL NO. 47/2000

### **Flynote**

Civil Law - judgement under order XIII - question of setting aside the said order.

### **Headnote**

The respondent sought to recover the sum of K1,053,209,738.00 being the price of maize seed sold by the respondent to the appellant, interest and costs. The respondent obtained Judgment under Order XIII for the sum claimed plus interest thereon. An interim order was made by the Deputy Registrar to pay the sum in three instalments due on 15<sup>th</sup> August, 15<sup>th</sup> September and 15<sup>th</sup> October respectively as proposed by the appellants themselves. The Appellants failed to pay on the due dates. The respondents issued a *fifa*. The appellants staged execution pending the determining of the application for special leave to review the judgment. This application was refused. The appellants obtained another stay pending an application to set aside judgment which was also refused. The appellants appeal to a judge in Chambers was dismissed.

### **Held :**

The appellant did not dispute its indebtedness to the respondent and even attempted to settle by monthly instalments without success. The appellants slept on its rights and there must be an end to litigation. Appeal dismissed.

For the Appellant M. Mutemwa, Mutemwa & Co.

For the Respondent N. K. Mubonda of D.H. Kemp & Co.

### **Judgment**

**LEWANIKA, J.S.** delivered the judgment of the court.

This is an appeal from a decision of a Judge of the High Court dismissing an appeal from a decision of the Deputy -Registrar in Chambers. The evidence on record is that the respondent issued a specially endorsed writ on 1<sup>st</sup> June, 1994 against the appellant claiming for the sum of K1,053,209,738.00 being the price of maize seed sold by the respondent to the appellant, interest and costs. On 8<sup>th</sup> August, 1994 the respondent obtained judgment under Order XIII for the sum claimed plus interest thereon at the current bank rate of 51% per annum plus 20% from the 12<sup>th</sup> day of February 1994 and K1,050.00 costs. On 29<sup>th</sup> September, 1994 the Deputy Registrar made an interim order against the appellant to pay the judgment sum in three instalments due on 15<sup>th</sup> August, 15<sup>th</sup> September and 15<sup>th</sup> October respectively as proposed by the appellants themselves. This order was made pending the hearing of the appellant's application to pay the judgment debt in three instalments filed on 22<sup>nd</sup> September, 1994.

On 18<sup>th</sup> November, 1994 both parties agreed to adjourn the hearing of the application to pay the judgment debt in three instalments on the ground that the appellant do comply with the interim order of 22<sup>nd</sup> September, 1994 within fourteen days failure to which the respondent was at liberty to levy execution. On 27<sup>th</sup> February, 1995 the respondent issued a writ of *fifa* which the appellant stayed on 28<sup>th</sup> February, pending the hearing of a summons for special leave to review the judgment. This application was subsequently refused on 4<sup>th</sup> April, 1995.

Thereafter on 31<sup>st</sup> July, 1996 the appellant took out a summons to set aside the judgment and obtained a stay of execution. The main ground for setting aside the judgment was that it contained an award of interest at 51% after judgment. On 25<sup>th</sup> November, 1996 the Deputy Registrar refused to entertain the application on the ground that it would amount to reviewing a decision made by another Deputy Registrar and further that if the applicant felt that the Deputy Registrar had erred in awarding the interest, it should be appealed to a Judge in Chambers.

The learned Judge in the court below found that the Deputy Registrar was on firm ground in refusing to set aside the judgment as the affidavit filed by the appellant did not disclose any defence to the sum claimed as well as the inordinate delay on the part of the appellant in seeking to set aside the judgment. On the question of interest, the learned Judge found that the rate of interest awarded by the Deputy Registrar was expressly agreed by the parties in their contract and also dismissed the appeal against the rate of interest awarded.

We have considered the grounds of appeal advanced by Counsel for the appellant and the reply by Counsel for the respondent as well as the evidence on record. Counsel for the appellant keeps on referring to the judgment herein as a default judgment but in actual fact it was a judgment under Order XIII obtained after the appellant had failed to file an affidavit in opposition to the application for leave to enter summary judgment. The evidence on record shows quite clearly that the appellant did not dispute its indebtedness to the respondent and even attempted to settle by monthly instalments without success. The only dispute which arose much later after the judgment had been entered was on the rate of interest and as pointed out by the learned Judge below, the rate of interest was mutually agreed by the parties. The judgment under Order XIII was entered on 8<sup>th</sup> August, 1994 and the application to set it aside was filed on 31<sup>st</sup> July, 1996. The appellant slept on its rights and there must be an end to litigation, we find the appeal to be devoid of merit and we dismiss it with costs. The costs are to be taxed in default of agreement.