

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA

SCZ APPEAL NO.43 OF 2003

(Civil Jurisdiction)

BETWEEN:

JOSEPH SUMBUKENI - APPLICANT

And

CHILANGA CEMENT PLC - RESPONDENT

Coram: Lewanika, DCJ., Chibesakunda and Mushabati, JJS.

On 25th April, 2007 and 17th May, 2007.

For the Applicant: In person.

For the Respondent: N. Nchito of MNB Legal Practitioners.

RULING

Mushabati, JS., delivered the Ruling of the Court.

Cases referred to:

1. *ZCCM Ltd vs. Siame and Others SCZ judgment No.21 of 2004*
2. *Trinity Engineering (Pvt) Ltd vs. Zambia National Commercial Bank Ltd (1995/97) Z.R.166.*
3. *Chibote Limited and others vs. Meridien Biao Bank (Z) Ltd (2003) Z.R.76.*

Legislation referred to:

Supreme Court Rules. Cap.25 – R.45 (5) and 78.

This is an application by way of notice of motion pursuant to ***Rules 48 (5) and 78 of the Supreme Court Rules, Cap.25 of the Laws of Zambia.***

The application is intended to correct the judgment of this court delivered on 28th August, 2006. The application is supported by an affidavit

in which he deposed that the court, in arriving at the decision it did, failed to take into consideration its earlier decision in the case of *ZCCM Limited vs. Jackson Munyika Siame (1)*. Rule 78 of the Supreme Court Rules Cap.25 of the Laws of Zambia states: **Clerical errors by the court or judge thereof in documents or process, or in any judgment, or errors therein arising from any accidental slip or omission, may at any time be corrected by the Court or a judge thereof.**

The question before us is whether the applicant is seeking for an order to correct a clerical error in our said judgment or to review over it.

The applicant has not pointed out any such error or omission that need to be corrected. His argument, in our view, was that we failed to take into account our decision in the case of *ZCCM Ltd vs. Jackson Munyika Siame (Supra)* and that had we done so a favourable decision would have been made in his favour.

Mr. Nchito argued that this application did not fall under the provisions of rule 78 and he cited the case of *Trinity Engineering (Pvt) Limited vs. Zambia National Commercial Bank Limited (2)*.

We have carefully considered the arguments advanced by both the applicant and counsel for the respondent.

It is clear from the applicant's arguments that his intention is that we should re-open the appeal by way of review. This is not the purpose of an application under rule 78, as correctly pointed out by Mr. Nchito. In case the court has no powers to review its judgment.

Our decision in *Trinity Engineering (Pvt) Ltd (Supra) and Chibote Limited and 3 others vs. Meridien Biao Bank (Z) Ltd (in liquidation) (3)* are very clear.

We find no error, omission or slip in our judgment. The applicant was just not satisfied with our judgment and he wants us to vary it in his favour, of which we cannot do.

The application is misplaced and an abuse of court process.

We are therefore, dismissing it. We make no order as to costs.



D. M. Lewanika
DEPUTY CHIEF JUSTICE



L. P. Chibesakunda
SUPREME COURT JUDGE



C. S. Mushabati
SUPREME COURT JUDGE