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**SCZ JUDGMENT NO. 16 of 2012**

**IN THE SUPREME COURT OF ZAMBIA Appeal No. 185/2008**

**HOLDEN AT LUSAKA**

**(Civil Jurisdiction)**

**B E T W E E N:**

**BP ZAMBIA LIMITED APPELLANT**

**AND**

**ATTORNEY GENERAL RESPONDENT**

***Coram: Sakala, CJ., Chibesakunda and Chibomba, JJS.***

 ***On 24th June, 2010 and On 24th April, 2012.***

*For the Appellant: Mr. S. Lungu, of Shamwana and Company.*

*For the Respondent: Mr. S. Lukangaba, Assistant Senior State Advocate.*

**J U D G M E N T**

**Chibomba, JS, delivered the Judgment of the Court**.

**Cases and other materials referred to:-**

1. Halsbury’s Laws of England, Volume 17 Pragraphs 428 and 457, ibid Volume 42, Paragraph 1134

2. Standard Bank vs. The Attorney General and Siafumba (1974) Z.R. 140

3. Attorney General vs. E. B. Jones Machinists (2000) Z. R. 114

4. Fredricks and Pelhams Timber Buildings vs. Wilkins (Read, Claimant) (1971) 3 All E. R. 545

**Legislation referred to:-**

1. The Sheriff’s Act, Chapter 37 of the Laws of Zambia.

2. The State Proceedings Act, Chapter 71 of the Laws of Zambia.

 The appellant appeals against the Ruling of the High Court on a Preliminary Issue whereunder the learned Judge ruled that the Sheriff of Zambia is not liable for execution carried out under

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**Section 14 of the Sheriff’s Act**, **Cap 37 of the Laws of Zambia**.

 Dissatisfied with this Ruling, the appellant appealed to this Court advancing two grounds of appeal as follows:-

“**1. That the learned Court erred in law and in fact when it held that the Sheriff is completely exempt from any form of liability.**

 **2. That the learned Court erred in law and in fact when it held that the Sheriff’s act of paying the sum of K928,618,298.00 to MMW and Company, contrary to an order prohibiting him from doing so, cannot render him liable by virtue of Section 14 of the Sheriff’s Act, Chapter 37 of the Laws of Zambia.”**

In support of this appeal, the learned Counsel for the appellant, Mr. Lungu, relied on the Heads of Argument filed. In support of the first ground of appeal, it was contended in the said Heads of Argument that the learned trial Judge erred in law and in fact when he held that the Sheriff is completely exempt from any form of liability. To buttress this contention, our attention was drawn to page 11 of the Record of Appeal where the learned Judge stated that:-

**“…the Sheriff shall be protected when he has made an honest mistake when executing the process of the Court. In any event Section 14 has gone further in protecting the Sheriff. The effect is that the suit against the Sheriff to which the Attorney General responded in his representative capacity is dismissed with costs to the Attorney General to be taxed in default of agreement**.”

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It was submitted that by so concluding, the learned Judge misdirected himself as he considered the Sheriff’s act an honest mistake that was protected under Section 14 of the Act. That paragraph 428of **Halsbury’s Laws of England1,** states that if the Writ is regular, the Sheriff is bound to execute it without question and it gives him absolute jurisdiction for all acts done under it. It was submitted that however, as much as **the Sheriff’s Act** provides that the Sheriff will not be liable to be sued, the exemption from liability is not absolute as the immunity in Section 14 is qualified.

 To support this argument, the cases of **Standard Bank vs. The Attorney General and Siajumba2** and **Attorney General vs. E. B. Jones Machinists3**, were cited. It was contended that the intention of the legislature when it enacted Section 14 of **the Sheriff’s Act** was to give immunity to the Sheriff against an act or omission of his subordinates and to protect him from being sued for acts performed by officers under his office. Section 14 of **the Sheriff’s Act** provides that:-

“**In every case of execution, all steps which may legally be taken therein shall be taken on the demand of the party who issued such**

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**execution, and such party shall be liable for any damage arising from any irregular proceeding taken at his instance**.”

It was submitted that Section 14(2) implies that the Sheriff will not be liable for damages arising out of execution of an irregular or unlawful writ as his duty is simply to carry out the instructions in the writ and not to ensure that the writ is lawful. That, therefore, the foregoing shows that the Sheriff cannot be liable for classified or specified acts. And that to this effect, **Halsbury’s Laws of England** states that:-

“**Subject to certain exceptions, all writs of execution on judgments and orders of the Supreme Court are directed to the high Sheriff, who is under a duty to execute them. In exercising his function in executing writs, the Sheriff acts as an officer of the Court**.”

It was submitted that although for some purposes, the Sheriff is an agent of the party who puts the writ into his hands, he is also a public functionary. And that **Halsbury’s Laws of England** states that one instance in which execution is deemed wrongful is if it is levied when a stay has been ordered by the Court as this is not a wrong of the party that issued the writ but that of the Sheriff and his officers as the Sheriff was made aware of the stay. Therefore, that in this case, since the Sheriff and his officers were made aware

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of the stay in good time, the Sheriff ought to have obeyed the Court order.

It was further argued that the act of paying out the money obtained from the appellant was in total disregard of the Court’s order and hence, the Sheriff must be liable as he cannot now be heard to say that he is immune under Section 14 of the Act. Therefore, that this Court should uphold the first ground of appeal.

In support of the second ground of appeal, it was contended that the learned trial Judge erred in law and in fact when he held that the Sheriff’s act of paying K928,618,298.00 to MMW and Company, contrary to an order prohibiting him from doing so, cannot render him liable under Section 14 of **the Sherriff’s Act**. We were referred to page 10 of the Record of Appeal where the learned Judge stated that:-

“**On the construction of Section 14, the liability falls on the party that triggered execution, in this case the advocates of the then Plaintiff. Mr. Chisanga argued that the Sheriff is liable for fraud or omission. I respectfully disagree in that there was no fraud by the Sheriff’s office. The Sheriff was acting on what was perceived to be lawful instructions of the then plaintiff’s law firm (Mr. Gondwe). They are therefore protected under Section 14**.”

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It was submitted that the learned Judge, however, failed to consider all the provisions of the law relating to functions and powers of the Sheriff. That the Sheriff has power to carry out instructions given to him in the Writ or execution process which although put in his hands by a party, is an order of the Court. The case of **Fredricks and Pelhams Timber Buildings vs. Wilkins**4 was cited in which, the Court in England held that:-

“**A Sheriff who interpleads does so on the footing that he is neutral in the dispute between the parties and does not ‘play on the same side’ as one of them, partly because being an officer charged with the carrying out of orders of the Courts of justice he is in effect in the same position as an officer of the Court…”**

It was submitted that the Sheriff, as an officer of the Court, ought to have obeyed the order staying execution. And that he should not have paid out the monies in contravention of the stay which prohibited him from doing so. And as such, the Sheriff should not be allowed to hide behind the provisions of Section 14 when it is clear that he disregarded the Court order with impunity notwithstanding that he is an officer of the Court who should have strictly abided by the Court Order. Therefore, that he should be found liable for his acts.

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In opposing this appeal, the learned Counsel for the respondent, Mr. Lukangaba, also relied on the respondent’s Heads of Argument. In response to the first ground of appeal, it was contended that the provision of Section 14 is clear and unambiguous. And that this Court did consider the provision of Section 14 of **the Sheriff’s Act** in **Attorney General vs. E. B. Jones Machinists Limited3** and thatthis Court held that Section 14 of the Sheriff’s Act gives immunity to the Sheriff from being sued in the performance of their work.

Further that no action lies against a party conferred with immunity. Section 4 of the **State Proceedings Act** was cited. It was argued that the State can only be liable in tort for the acts or omission of its servants after such an act or omission has given rise to a cause of action in tort against that servant or agent. That, however, a cause of action does not arise in tort against a person given immunity by Statute. Therefore, that although the Sheriff is a public officer, the State cannot be vicarious liable for his actions because of the immunity conferred on the Sheriff in the

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performance of his work. The case of **Attorney General vs. E. B. Jones Machinists Limited**3 was cited in which we held that:-

**“In every case of execution, all steps which may be taken therein shall be taken on demand of the party who issued such execution and such party shall be liable for any damage arising from any irregular proceeding taken at his instance**.

And that:-

**“It follows that the Sheriffs and officers executing Court process are agents of the party issuing the process notwithstanding how or by which institution the Sheriff and his officers are appointed**.”

It was further submitted that the Sheriff, in execution of process, is an agent of the person who took out the process and thus, the person to be held liable for the Sheriff’s action is the person at whose instance the Court process is executed. Therefore, that since the Attorney General did not issue any instruction or demand that the Sheriff executes the Court process in this matter, then this appeal should be dismissed with costs.

We have seriously considered this appeal together with the arguments advanced in the respective Skeleton Arguments and the

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authorities cited therein. We have also considered the Judgment by the learned Judge in the Court below. It is our considered view that

this appeal raises the question whether the Sheriff is liable for wrongful execution carried out under Section 14 of the Sheriff’s Act. We have already recast the provisions of Section 14 of the Sheriff’s Act. For avoidance of doubt, we repeat this here.

“**In every case of execution, all steps which may legally be taken therein shall be taken on the demand of the party who issued such execution, and such party shall be liable for any damage arising from any irregular proceeding taken at his instance**.”

With respect to the first ground of appeal, the major argument raised is that since the Sheriff was aware of the order staying execution, he ought not to have proceeded with the execution and that as an officer of the Court, he should have abided by the Court Order.

We have considered the arguments advanced in support of the first ground of appeal. It is our considered view that the provision of Section 14 of **the Sheriff’s Act** is clear and requires no special interpretation. Section 14 firmly and clearly exempts the Sheriff of Zambia and his officers from liability arising out of any wrongful

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execution of a Writ. We made this clear in the case of **Attorney General vs. E. B. Jones Machinists Limited**3  in which we had

occasion to consider the provision of Section 14 of the Act. We stated in that case that Section 14 of **the Sheriff’s Act** gives immunity to the Sheriff and his officers from being sued in the performance of their work. We also made it clear that in every case of execution, all steps which may legally be taken therein shall be taken on the demand of the party who issued such execution and that such a party shall be liable for any damage arising from any irregular execution taken on its instance.

In the current case, the execution was carried out on behalf of the appellant which armed the Sheriff with the execution process. Therefore, the appellant as the party that armed the Sheriff with the execution process, is the one that is liable for any wrongful execution resulting from that process.

Since the respondent did not issue any instructions or demand that the Sheriff executes the Court process in this matter, the respondent cannot be held liable for any wrongful execution or

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damages arising from any wrongful execution of the process. We, therefore, find no merit in the first ground of appeal as we do not subscribe to the contention that since execution was levied after a

stay was issued by the Court, the wrongful execution should not be attributed to the party that issued the writ of fifa but to the Sheriff as he was made aware of the stay. The reason is that a finding would be contrary to the provision of Section 14 of the Act and would defeat the purpose the Legislature enacted Section 14 of **the Sheriff’s Act** in the manner it did.

In **Attorney General vs. E. B. Jones Machinists Limited**3, we made it clear that the Sheriff and hisofficers when executing Court process are agents of the party who issued the process notwithstanding how or by which institution the Sheriff and his officers are appointed. Therefore, the respondent cannot be liable for wrongful execution of the Court process by the Sheriff and/or his officers as the respondent did not instruct the Sheriff to execute as this was done by the appellant.

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With respect to the second ground of appeal, which attacks the learned trial Judge’s finding that the Sheriff’s act of paying the sum of K928,618,298.00 to MMW & Company was not wrong, the major argument is that the learned Judge ought not to have so

held as the Sheriff acted contrary to the Court Order and instructions prohibiting him from paying this money. It is our considered view that the learned trial Judge was on firm ground when he held that Section 14 of the Act protects the Sheriff and his officers where he has made an honest mistake in executing the process of the Court.

It is, therefore, correct to say that Section 14 of the Act grants the Sheriff immunity from liability arising out of wrongful execution of Court process. The case of **Attorney General vs. E. B. Jones Machinists Limited**3 is authority on this case as Section 14 gives the Sheriff statutory immunity from being sued in the performance of his work.

The two grounds of appeal having all failed, the sum total is that this appeal has failed as it has no merit. The same is

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dismissed with costs to the respondent to be taxed in default of agreement.

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E. L. SAKALA

**CHIEF JUSTICE**

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L. P. CHIBESAKUNDA

**SUPREME COURT JUDGE**

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H. CHIBOMBA

**SUPREME COURT JUDGE**